

**2025 CR 424 Roadway Resurfacing
May 5, 2025
10:00 A.M.**

Company Name _____

Contact Name _____

Email Address _____

Street Address _____

City, State _____

Zip Code _____

Phone _____

Fax _____

To be considered a valid bidder, you must either pick up a contract book at our office and be added to the bidders list or fax this registration form to us at least **4 days prior to the bid opening** to be added to the bidders list. Subcontractors and suppliers are encouraged but not required to register as a contract holder.

To be a qualified bidder you must fax this sheet back to our office. If this is not done, your bid will be rejected.

Fax completed form to:

Defiance County Engineer's Office: (419) 782-3031

OFFICE OF THE COUNTY ENGINEER

PROPOSAL

**TO THE BOARD OF COUNTY COMMISSIONERS
COUNTY OF DEFIANCE**

For: DEF-CR 424 Roadway Resurfacing
Bidder's
Name: _____
Street
Address: _____
P.O. Box: _____
City, State, Zip: _____
Project No. PID 122963
DBE Goal: 5%

Date of Letting: May 5, 2025
Place of Letting: Defiance County Board of Commissioners
500 Court Street
Defiance, Ohio 43512
Completion Date: September 30, 2025

Prepared By:
Defiance County Engineer
510 Court St., Ste. 201
Defiance OH 43512

Warren J. Schlatter, P.E., P.S.

BID DOCUMENTS

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ADVERTISEMENT

NOTICE TO BIDDERS

Sealed bids may be submitted on or before the bid opening date of **May 5, 2025**, at **10:00 a.m.** local time, at the Defiance County Board of Commissioners Office, 500 Court Street, Defiance, Ohio 43512, for the following project:

CR 424 Roadway Resurfacing

Bids shall be opened & bid prices publicly read immediately thereafter.

Bid documents, including contract terms & conditions, may be obtained from the Defiance County Engineer, at 510 Court Street, Ste. 201, Defiance, Ohio 43512 between 8:00 a.m. – 4:30p.m., Monday through Friday (holidays excluded).

Advertisements for bids, bid documents and plan holder's list also are posted on the internet at www.defiance-county.com/engineer/engineer.html under the Bid Projects heading.

The Contractor must be ODOT prequalified, and the DBE Goal is 5%.

The Board reserves the right to reject any or all bids.

COUNTY OF DEFIANCE

Liz Stuart, Clerk
Defiance County Commissioners

Warren J. Schlatter, P.E., P.S.
Defiance County Engineer

Bid Advertisement Date: Tuesday, April 8, 2025
 Tuesday, April 15, 2025
 Tuesday, April 22, 2025

ENGINEER'S ESTIMATE: \$ 520,000.00

INTRODUCTION

It is the intent of these contract documents to serve as the basis for preparing a contractor's estimate of cost, or the contractor's bid; to show engineering intent and to set a level of equality of workmanship and performance; and as the basis for the written contract or agreement between owner and contractor.

They represent the composite of the requirements of the engineer, the owner and any and all funding agencies. An effort has been made, insofar as is practicable, to minimize any duplication or conflict in requirements or standards or performance and workmanship. Insomuch as this is not always possible, there may be contained herein some conflicting requirements or standards. When such is the case, the more stringent requirements shall always govern, unless stated otherwise. Likewise, Supplemental Provisions will amend and/or add to the Standard Provisions and shall always have precedence over the provisions to which they are a supplement.

The engineer, acting as the owner's representative, shall interpret the intent of the contract documents in a fair and unbiased manner and shall decide any and all questions which may arise to the quality and acceptability of materials furnished and work performed.

I. INSTRUCTIONS TO BIDDERS

1. SUBMISSION OF BID

Sealed Bids will be received at the Defiance County Board of Commissioners Office, on or before the advertised Bid date and time, as extended, for all labor, materials, equipment, supervision, coordination and other things necessary for the full and complete performance of the project described by the accompanying Bid advertisement (herein referenced as the "Project").

Bids must be submitted in sealed envelopes marked with the Project title, the name of the Bidder and his address. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed to the Board of County Commissioners 500 Court Street, Defiance, Ohio 43512. Bids shall be opened immediately upon expiration of the Bid submission time, with the names of bidders and their respective bid prices read publicly.

2. STANDARD SPECIFICATIONS & TERMS

The Construction & Material Specifications of the State of Ohio, Department of Transportation **2023**, shall serve as standard specifications for any contract awarded hereunder. Said Construction & Material Specifications shall be referenced herein as the "Standard Specifications". Supplemental specifications, requirements, terms, conditions and covenants of these Instructions to Bidders and of the accompanying Bid Documents shall control over conflicting terms found in the Standard Specifications.

Wherever the following terms appear in the Standard Specifications, said terms shall have the following meaning:

A. The terms "State", "State of Ohio", "Department" and "Department of Transportation" refer to the County, acting through its Board of Commissioners. The County also may be referenced as the "County" or the "Owner" herein.

B. The term "Director", "DCE" and "DDD" refers to the County Engineer.

C. The term "Engineer" refers to the County Engineer, or to his duly authorized representative.

D. The term "Laboratory" refers to such testing laboratory or consultant as shall be designated by the County Engineer or by the County Engineer's duly authorized representative.

A numerical designation for an "item" referenced herein refers to the description of said item number as provided by the Standard Specifications.

Bidders are specifically referred to the definitions provided by section 101.03 of the Standard Specifications. Any undefined trade and technical words and terms shall be deemed to have the meaning established by trade usage in the highway/bridge construction and civil engineering consultation business.

3. FORM OF BID

Bids shall be submitted using the attached blank forms, designed for such purpose. These forms must be completed intact, without removal of any part, must recite the full name of the party making the Bid, and must be properly signed.

In each blank marked "unit price", bidders are required to provide a Bid price per referenced unit for the requested materials, labor or equipment, or referenced combination thereof. Failure to provide a price for each unit price item, or failure to provide prices for lump sum items, will render the Bid informal, allowing its rejection at the County's discretion.

Extended unit prices are calculated by multiplying the bidder's unit price entries times their respective approximate quantities. The resultant extended unit price figures, in addition to any lump sum prices, are added to calculate the amount of each Bid.

The sum of the unit prices and lump sum prices provided by each Bidder shall comprise that Bidder's Bid price for consideration of award of contract. If an error is made in the extension of unit prices, or in addition of the unit and lump sum prices, the accurate extended unit prices and total shall govern.

Quantities provided by the Bid Documents are estimates only. The Engineer reserves the right to eliminate, increase or decrease the actual quantity of any unit price item or to non-perform any lump sum item.

4. BIDDER QUALIFICATIONS

Bidders must be ODOT pre-qualified. Prequalification by the Ohio Department of Transportation, as described by ORC Sections 5525.02-.09, for performance of Work of the same type, character and magnitude as described hereby, is acceptable. In addition, each Bidder shall complete any Bidder qualification forms provided with the Bid Documents, and shall furnish documentation and evidence of qualifications as are required thereby.

Evidence of authority to conduct business as and out-of-state corporation in the state where work is to be performed shall be provided. State contractor license number, if any, must be shown on **page 120**.

5. EXAMINATION OF BID DOCUMENTS & SITE OF WORK

Bidders must carefully examine the Bid Documents and perform a reasonable site investigation before submitting a Bid. Submission of a Bid is an affirmative statement that the Bidder has investigated the Project site and is satisfied as to the character, quality, quantities and conditions to be encountered in performing the Work. A reasonable site investigation includes investigating the Project site, borrow sites, hauling roads and all other locations related to the performance of the Work.

6. BID GUARANTEE

Each Bid shall be accompanied by a bid guarantee, in the form of a bid bond, a certified check, a cashiers check or a letter of credit, in conformity with the requirements of ORC 153.54 and 153.571 (B). If a bid bond is used, the bond shall be in the full amount of the bid and signed by a Surety company authorized to do business in Ohio, and accompanied by the Surety's sufficient power of attorney affirming said signature. If a certified check, cashiers check or letter of credit is used, the instrument shall be drawn on a solvent bank in an amount not less than ten percent (10%) of the Bid. The bid guarantee shall be given as security that, if the Bid is accepted, the Bidder will enter into a contract in conformity with the Bid. Bids less than twenty-five thousand dollars (\$25,000.00) do not require a bid guarantee.

7. FACTORS FOR ACCEPTANCE OR REJECTION OF BIDS

- A. Pursuant to ORC 307.90 (A), a contract shall be awarded to the lowest and best Bid.
- B. Any Bid which is incomplete, conditional, obscure, or which contains additions not called for or irregularities of any kind, may be rejected.
- C. The Board of Commissioners reserves the right to reject any and all Bids, and also the right to waive any informality in the Bid. The Board of Commissioners has the right to postpone the decision to award a contract for up to sixty (60) days.
- D. No contract shall be awarded to any person, firm or corporation that is in arrears or is in default to the County upon any debt or contract, or that is in default as surety or otherwise upon any obligation to the County, or has failed to perform faithfully any previous contract with the County, or that has an unresolved finding of recovery with the State Auditor, or has been debarred by the County from consideration for contract awards.
- E. A conditional or qualified Bid will not be accepted.
- F. Award will be made as a whole to one Bidder.

8. WITHDRAWAL OF BIDS

A Bidder may request, in writing, to withdraw its Bid within five business days of the opening. Such requests will be reviewed by the Board of Commissioners for approval as permitted by ORC 9.31 and 153.54 (G). If approved, collection of the bid guarantee or bond will be waived.

9. OTHER COSTS & REQUIREMENTS

Bids must include all costs of performing the Work and all costs of fulfilling the requirements of laws, rules and regulations pertaining thereto. The following is a partial list of ancillary contract costs and requirements. Said list is provided for the convenience of Bidders, to assist in their inclusion of all components of costs and fulfillment of all requirements, though this list does not recite all such costs and requirements.

- A. Bids must include the cost of all required bonds (performance and maintenance) (Must have ODOT and Defiance County Board of Commissioners as obligee).

B. Bids must include the cost to procure all permits and licenses, to pay all charges, fees and taxes, and to provide all notices necessary and incidental to the due and lawful prosecution of the Work.

C. Bids must include the cost of insurance coverage of the type and at least in the amounts set forth by section 107.12 of the Standard Specifications and by any special bid provisions.

D. The County is exempt from all sales, excise, and transportation taxes, with the exception of State of Ohio gasoline tax. Bid prices shall exclude all such taxes. Upon request, the County will fill out a tax-exempt certification.

E. "Declaration of Personal Property Tax Delinquency" form must be fully executed and notarized pursuant to ORC Section 5719.042, before an award can be made.

10. CLAIMS AND DISPUTE RESOLUTION PROCESS

For any disputes not resolved by verbal notice and review within 2 days, the resolution process shall begin with the Contractor sending a written letter to the Defiance County Engineer stating said disputes. The Defiance County Engineer shall work expeditiously to either resolve the disputes at the project level or after review with the District Construction Engineer of the Ohio Department of Transportation. This process is designed to facilitate the resolution of disputes before they become claims.

II. SUPPLEMENTAL CONTRACT PROVISIONS

1. AWARD REQUIREMENTS OF SUCCESSFUL BIDDER/CONTRACTOR

The following is a partial list of award contract requirements. Said list is provided for the convenience of Bidders, to assist in their inclusion of all components of costs of such requirements, though this list does not recite all such costs and requirements.

A. The successful Bidder/Contractor must provide a one hundred percent (100%) Performance Bond based on the contract amount, in conformity with the requirements of ORC section 153.54 (C) and 153.57 (A). ODOT and Defiance County Board of Commissioners must be named as obligee on Performance Bond. A Maintenance Bond in the amount to ten percent (10%) of the final contract amount, extending coverage for one (1) year beyond the acceptance date of the completed Project, must be provided by the Contractor as a prerequisite to final payment. Said Maintenance Bond shall assure the repair and/or correction of any defects, deficiencies or omissions in the Project Work.

B. The Contractor must provide evidence of all insurance coverage requirements of section 107.12 of the Standard Specifications.

C. The Contractor agrees to provide the County with full and complete documentation of payment of prevailing wages to all employees of the Contractor and of its subcontractors governed by Federal Davis-Bacon Prevailing Wage law.

D. The Contractor agrees to provide the County with a contact person, a telephone number, a mailing address and, if available, an electronic mail address for purposes of giving notice to the Contractor of any changes in prevailing wage rates. Where an electronic mail address is given, the Contractor agrees that the use of that method by the County satisfies any notice requirements of any change in prevailing wage rates. Upon commencement of contract work, the Contractor and its subcontractors subject to the contract's prevailing wage requirements must provide the prevailing wage coordinator with a schedule of wages, with certified copies of payroll being required throughout work on the Project.

E. The Contractor further agrees to stay informed of applicable prevailing wage rates and to immediately inform all its subcontractors and the Engineer of such changes. The Contractor agrees to defend and indemnify the County, its elected officials, agents and employees, against all claims, actions, demands, judgments, settlements, damages, liabilities, losses, and costs of any kind, including, but not limited to, reasonable fees of attorneys and experts, arising from or related to the Contractor's failure to inform its subcontractors of changes in prevailing wage rates.

F. The Contractor must furnish the County with a completed IRS Form W-9, "Request for Taxpayer Identification Number & Certification". The Internal Revenue Code requires the County to file an information return each January 31st on all payments made the previous year of \$600.00 or more. As required by Section 3406 of the Internal Revenue Code (26 U.S.C. 3406), the County shall withhold federal taxes of a rate of thirty-one percent (31%) if a correct taxpayer identification number is not provided. Back-up withholding requirements continue until the required information is received.

2. OTHER CONTRACTOR DUTIES

In addition to the duties cited by the Standard Specifications and elsewhere in these Bid Documents, the Contractor has the following duties:

A. When determined necessary by the Engineer, the Contractor shall provide a field office, suitably and of ample size and accommodations, from which the Engineer's inspections, as well as the Contractor's Work, may be carried out. The Contractor must keep a full set of Plans and Specifications available at the field office.

B. The Contractor must furnish, without extra compensation therefore, such assistance as the Engineer, or his assistants or inspectors may require, in measuring in and setting stakes or marks for indicating lines, grades or levels, for measuring or determining quantities for estimates, and for handling and inspecting materials to be used on the Work, whether such materials have been delivered upon the site of Work or are in local storage. The Contractor shall provide such facilities for weighing and measuring materials as the Engineer may deem necessary, to secure the proper fulfillment of the provisions and requirements of the Specifications.

C. The Contractor shall diligently protect and preserve all stakes, marks, bench marks and monuments set or used by the Engineer, and shall be responsible for securing therefore the proper lines, grades and levels for the structures to be built.

D. The Contractor must place or construct, in such manner and at such points as the Engineer may require, necessary sanitary conveniences for the use of employees on the Work site. They shall be properly secluded from public observation, shall be maintained sanitary and inoffensive at all times, and their use shall be strictly enforced. The Contractor must provide an ample supply of pure drinking water for employees at all times, and the source of such supply shall be subject, at all times, to the approval of the Engineer.

E. The Contractor is reminded of its duty to notify the registered underground utility protection service and owners of underground utility facilities at least two working days in advance of commencement of construction operations that may involve such facilities, to allow surface marking of facility locations.

3. DISCRIMINATION PROHIBITED

The Contractor understands and agrees that, in the hiring of employees for the performance of work under the contract or any subordinate contract hereunder, the Contractor, its subcontractors and persons acting on behalf of the same shall not discriminate in the hiring or retention of subordinate contractors or employees "by" or "for" reason of race, creed, sex, disability (as defined by ORC 4112.01) or color; nor shall said parties discriminate against any citizen of the State of Ohio in the employment of labor or workers who otherwise qualify and who are available to perform the work to which the contract relates.

Further, the Contractor and its subcontractors and persons acting on behalf of the same shall not discriminate against or intimidate any employee hired for performance of the Work under the contract on account of race, creed, sex, disability (as defined by ORC (4112.01) or color.

In addition, the Contractor agrees, as a prerequisite of award, to complete the attached "Equal Employment Opportunity Compliance Certificate", and to fulfill all requirements thereof.

4. INSPECTION

The Engineer, assistants and agents shall have, at all times, immediate access and right to enter upon the Work site and other Work premises occupied by the Contractor as well as upon the site of all sources from which materials are being obtained for the contract. The Contractor shall provide safe and proper facilities for permitting such entrance and for inspecting and testing purposes. Subcontractors and suppliers shall have similar obligations imposed by subordinate contracts. The Contractor shall furnish the Engineer with all reasonable facilities for ascertaining that the materials and Work are in accordance with the requirement and intention of the Specifications and contract, even to the extent of uncovering or removing portions of finished Work.

The Contractor shall give definite information, at any time, as to the place from which, or persons from whom, any material is being or will be procured. All materials to be used may be subjected to such tests as the Engineer may require assuring that such materials conform, in all respects, to the requirements of the Specifications, or that they are equal to samples submitted by the Contractor. All materials which do not conform to such requirements shall be rejected, and the Contractor shall remove such rejected materials from the vicinity of the Work within twenty-four (24) hours thereafter.

The inspection and supervision of the Work and materials by the Engineer, assistants and inspectors is intended to aid the Contractor in accomplishing the fulfillment of duties and obligations under the contract, but such inspection and supervision shall not relieve the Contractor from contract obligations.

Defective Work shall be made good and unsuitable materials may be rejected, notwithstanding that such Work and materials have been previously overlooked by the Engineer and accepted or estimated for payment. If the Work, or any part thereof, is found, at any time before the acceptance of the whole Work and for the period of the Maintenance Bond thereafter, to be defective, or to contain defective materials, the Contractor shall make good such defects under the direction of the Engineer.

Upon being attached to, or incorporated in the Work, or affixed in or to the soil, all materials shall become property of the County. Thereafter the Contractor shall have no right of property therein, unless they are afterward rejected by the Engineer. The Contractor bears risk of loss of and damage to the Work until completion and final acceptance of the Work.

The Contractor shall schedule inspection 24 hours in advance of the performance of the respective Work. At the pre-construction meeting, the Engineer shall provide the Contractor with phone numbers and names of a contact person and of the Engineer's inspectors. The Contractor shall inform the Engineer of his Work schedule and the hours of operation before the Contractor may begin Work.

When Work is scheduled and the Contractor desires to change the approved schedule, the Contractor shall contact the Engineer's inspector at or before 7:30 a.m. of the scheduled Work

date to cancel or adjust the hours of inspection. If the Contractor fails to contact the Engineer's inspector as stated above or if the notice is within two (2) hours of the scheduled inspection and is insufficient to cancel attendance by the Engineer's inspector, the Contractor will be charged for two (2) hours of inspection time at the current inspection rate. This cost will be subtracted from the Contractor's monthly pay estimate.

5. SIGNIFICANT CHANGES IN CHARACTER OF THE WORK.

The Engineer may alter the Work as necessary to complete the Project. The Engineer will make appropriate adjustments according to 108.06 and 109.05, if such alterations significantly change the character of the Work.

If the alterations or changes in quantities significantly change the character of the Work under the Contract, whether such alterations or changes are in themselves significant changes to the character of the Work or by affecting other Work cause such other Work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the Contract. Before performing significantly changed Work, reach agreement with the Department concerning the basis for the adjustment. If the Contractor disagrees as to whether an alteration constitutes a significant change, use the notification procedures specified in 104.02.G.

The term "significant change" is defined as the follows:

1. when the character of the Work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
2. when the product of the quantity in excess of the estimated quantity of a contract item and the unit price exceeds the limits set forth in Table 104.02-1. If the increase does not exceed the limits set forth in Table 104.02-1, then the Department will pay for the increased Work at the Contract Price.

Table 104.02-1

Contract Price	Contract Limits
Up to \$500,000	\$25,000
\$500,001 to \$2,000,000	5% of Total Contract Price
Over \$2,000,000	\$100,000

If the decrease in quantity of any unit price Contract Item exceeds 25 percent of the estimated quantity, and the total of all such adjustments for all Contract Items is more than \$400, then after the determination of final quantities according to 109.12.C, the Engineer will adjust the unit prices for the affected Contract item by multiplying the bid unit price by the factor obtained from Table 104.02-2.

Table 104.02-2

% Decrease	Factor	% Decrease	Factor
25 to 28	1.02	61	1.14
29 to 32	1.03	62	1.15
33 to 35	1.04	63	1.16

36 to 38	1.05	64	1.17
39 to 41	1.06	65	1.18
42 to 44	1.07	66	1.19
45 to 47	1.08	67	1.20
48 to 50	1.09	68	1.21
51 to 53	1.10	69	1.22
54 to 56	1.11	70	1.23
57 to 59	1.12	71	1.24
60	1.13	72 and over	1.25

6. NO WAIVER RIGHTS

No act of the Engineer, or his assistants or inspectors, shall operate as waiver of any provisions of the contract, nor shall any breach of this contract operate as a waiver of any other subsequent breach. Any and all remedies provided in this contract are cumulative, in addition to other remedies herein provided. The mention of any specific liability or duty of the Contractor, in any part of the Specifications or contract, shall not be construed as a limitation or restriction upon general liability or duty imposed upon the Contractor by said Specifications and contract. Should any part of the Work be sublet by the Contractor, such action shall in no way release the Contractor from liability or obligation hereunder. The Contractor shall be liable for the acts, omissions and negligence of any subcontractor, and shall be responsible therefore as though no subcontract existed.

7. DAMAGES FOR LATE COMPLETION; EXTENSIONS OF TIME

Time is of the essence to this contract. The rate of progress shall be such as to complete the Project Work within the time limit specified herein.

In the event that the Work is not substantially completed within the time limit aforesaid, with said incompleteness prohibiting beneficial use and occupancy of the Project, in compensation for the public's loss of use of the Project, the Contractor shall forfeit liquidated damages in the amount set forth by section 108.07 of the Standard Specifications.

Such amounts shall be deducted by the Engineer from the partial or final estimates to be allowed the Contractor.

The Board of County Commissioners may for good cause shown, extend the time of completion. Any such extension in time shall not be deemed a waiver by the County of any other rights provided for under this contract, and shall not operate to release any Surety from any bond obligations.

The completion date for this project is **September 30, 2025**.

8. NIGHT, SUNDAY & HOLIDAY WORK

No Work will be permitted on Sundays or legal holidays, except as authorized by the Engineer or the Board of Commissioners. No Work will be permitted after dark except under terms and conditions agreed to in writing by the Engineer, Board of Commissioners and Contractor. No

extra compensation will be allowed to the Contractor for night, Sunday or Holiday Work, regardless of cause of such Work.

9. PARTIAL PAYMENTS

Before the day, stipulated by the owner, of each month, the contractor shall make a written estimate of the amount of value of the work and materials incorporated into the work during the preceding month, broken down into bid items. The contractor shall submit his estimate to the engineer immediately upon its preparation, and after each such partial estimate has been certified to in writing by the engineer the owner shall, on or before the first day of the month next following, pay the contractor as specified below.

No partial payment will be made when the amount due the contractor since the last estimate amounts to less than five hundred dollars.

From the total of the amount determined to be payable on a partial payment, 8 percent of the first 50 percent of such total amount will be deducted and retained by the owner until the final payment is made except. The balance of the amount payable, less all previous payments, shall be certified for payment.

Upon completion and acceptance of the project by the owner and engineer, (i.e., the signing of the "Certification of Substantial Completion" by all parties involved), the owner shall release one half (1/2) of the retainer. The remaining one half (1/2) of the retainer shall be retained by the owner for the following periods after the date of approval and acceptance of the project.

<u>Acceptance Date</u>	<u>Period</u>
From Feb. 15 to Aug. 15	90 Calendar Days
From Aug. 16 to Feb. 14	180 Calendar Days

The owner agrees that upon expiration of the above period, the contractor shall be entitled to the whole sum of the reserve, less any part expended by the owner in making repairs.

Should any defective work or material or acceptable work that has been damaged by the Contractor's operations be discovered previous to the final acceptance or should a reasonable doubt arise previous to the final acceptance as to the integrity of any part of the completed work, the estimate and payment for such defective or questioned work shall not be allowed until the effect has been remedied and cause for doubt removed.

It is understood and agreed that the contractor shall not be entitled to demand or receive partial payment based on quantities of work in excess of those provided in the proposal or covered by approved change orders or supplemental agreements, except when such excess quantities have been determined by the engineer to be a part of the final quantity for the item of work in question.

No partial payment shall bind the owner to the acceptance of any materials or work in place as to quality or quantity. All partial payments are subject to correction at the time of final payment.

10. REMOVAL OF EXISTING STRUCTURES

All existing structures encountered within the established lines, grades or grading sections shall be removed by the Contractor, unless such existing structures are otherwise specified to be relocated, adjusted up or down, salvaged, abandoned in place, re-used in the work or to remain in place. The cost of removing such existing structures shall not be measured or paid for directly, but shall be included in the various contract item, unless the plans state a pay item for said structure.

Should the Contractor encounter an existing structure (above or below ground) in the work for which the disposition is not indicated on the plans, the Engineer shall be notified prior to disturbing such structure. The disposition of existing structures so encountered shall be immediately determined by the Engineer in accordance with the provisions of the contract.

Except as provided in the subsection titled RIGHTS IN AND USE OF MATERIALS FOUND IN THE WORK of this Section, it is intended that all existing materials or structures that may be encountered (within the lines, grades or grading sections established for completion of the work) shall be utilized in the work as otherwise provided for in the contract and shall remain the property of the Owner when so utilized in the work.

11. RIGHTS IN AND USE OF MATERIALS FOUND IN THE WORK

Should the Contractor encounter any material such as (but not restricted to) sand, stone, gravel, slag or concrete slabs (asphalt, clay tile, building or paving bricks or building or paving stones) within the established lines, grades or grading sections, the use of which is intended by the terms of the contract to be either embankment or waste, he may at his option either:

- A. Use such material in another contract item, providing such use is approved by the Engineer and in conformance with the contract specifications applicable to such use; or,
- B. Remove such material from the site, upon written approval of the Engineer, and providing written notice to the Director of Environmental Protection at least seven (7) days prior to moving; or,
- C. Use such material for his own temporary construction site; or,
- D. Use such material as intended by the terms of the contract.

Should the Contractor wish to exercise option A, B or C, he shall request the Engineer's approval in advance of such use.

Should the Engineer approve the Contractor's request to exercise option A, B or C, the Contractor shall be paid for the excavation or removal of such material at the applicable contract price. The Contractor shall replace, at his own expense, such removed or excavated material with an agreed Equal volume of material that is acceptable for use in constructing embankment, backfills or otherwise to the extent that such replacement material is needed to complete the contract work. The Contractor shall not be charged for his use of such materials so used in the work or removed from the site.

Should the Engineer approve the Contractor's exercise of option A, the Contractor shall be paid, at the applicable contract price for furnishing and installing such material in accordance with requirements of the contract item in which the material is used.

It is understood and agreed that the Contractor shall make no claim for delays by reason of his exercise of option A, B or C.

The Contractor shall not excavate, remove or otherwise disturb any material, structure or part of a structure which is located outside the lines, grades or grading sections established for the work, except where such excavation or removal is provided for in the contract, plans or specifications.

12. FINAL CLEAN UP

Upon completion of the work and before acceptance and final payment will be made, the Contractor shall remove from the site all machinery, equipment, surplus and discarded materials, rubbish, temporary structures and stumps or portions of trees. He shall cut all brush and woods within the limits indicated and shall leave the site in a neat and presentable condition. Material cleared from the site and deposited on adjacent property will not be considered as having been disposed of satisfactorily, unless the Contractor has obtained the written permission of such property owner.

13. RIGHT OF PROPERTY IN MATERIALS

Nothing in this contract shall be considered as vesting in the Contractor any right of property in materials used after they have been affixed or attached to the work, nor in materials that have been estimated for partial payment; but all such materials shall upon being so affixed, attached or estimated, become the property of the Owner. All materials removed from old construction and all materials or articles of value found in the excavation or on the site of the work shall be brought to the attention of the Engineer; and, if he shall so order, shall be the property of the Owner and shall be placed conveniently for removal. If not claimed by the Owner, such material or articles shall be removed and disposed of by the Contractor at his own expense.

14. CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS

The required contract provisions for federal-aid construction contracts (contained in ODOT's 2023 LPA template) are hereby incorporated by reference. The following rules and regulations shall apply to all work to be done under this contract. If any provisions of these rules and regulations conflict with any other clauses of this contract, the ODOT 2023 LPA Template shall govern.

By signing the specified contract proposal, of which the ODOT 2023 LPA Template (ODOT Spec Book and LPA Spec Book) has been incorporated, the bidder agrees to all of the below provisions.

**ODOT's LPA Template (ODOT Spec Book and LPA Spec Book)
Required Contract Provisions.**

1. ODOT'S 2023 CONSTRUCTION AND MATERIAL SPECIFICATIONS (C&MS) AND ITS SUPPLEMENTS

ODOT's Construction and Material Specifications (C&MS) and its supplements are hereby incorporated by reference, in their entirety, as if rewritten herein. **The incorporation of**

this document by reference does not interfere with the order of precedence set forth in Section 105.04 of the C&MS Manual.

In accordance with the Locally Administrated Transportation Projects Manual of Procedures (LATPM), when bidding this project, the contractor should replace the terms “the department”, “the engineer”, “the DCE” and “the DCA” with the term “the Local Public Agency (LPA).” Furthermore, nothing in this document is intended to alter the LPA’s adherence to Ohio Revised Code, local ordinance or other applicable requirements which are properly established.

2. PN 100 FOR LPA PROJECTS

(PN 100 outlines general provisions to a construction contract. Local public agencies (LPAs) may choose to incorporate this document to include LPA specific preferences.

2023 PN 100 for LPA Projects

STATE OF OHIO

**DEPARTMENT OF
TRANSPORTATION
COLUMBUS, OHIO**

**LPA
CONSTRUCTION AND MATERIAL
SPECIFICATIONS**

**PROPOSAL NOTE 100
07/26/2023**



An Equal Opportunity Employer

**Modified By:
Local Public Agency:
Date:**

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100 GENERAL PROVISIONS

101 DEFINITIONS AND TERMS

101.01 General. These Construction and Material Specifications are written to the Bidder before award of the Contract and to the Contractor after award of the Contract. The sentences that direct the Contractor to perform Work are written as commands. For example, a requirement to provide cold-weather protection would be expressed as, "Provide cold-weather protection for concrete," rather than "The Contractor shall provide cold-weather protection for concrete." In the imperative mood, the subject "the Bidder" or "the Contractor" is understood.

All requirements to be performed by others have been written in the active voice. Sentences written in the active voice identify the party responsible for performing the action. For example, "The Engineer will determine the density of the compacted material." Certain requirements of the Contractor may also be written in the active voice, rather than the active voice and imperative mood, if the sentence includes requirements for others in addition to the Contractor. For example, "After the Contractor provides initial written notice, the Engineer will revise the Contract as specified in 104.02."

Sentences that define terms, describe a product or desired result, or describe a condition that may exist are written in indicative mood. These types of sentences use verbs requiring no action. For example, "The characteristics of the soils actually encountered in the subgrade may affect the quality of the cement and depth of treatment necessary."

101.02 Abbreviations. The following abbreviations, when used in the Contract Documents, represent the full text shown.

AAN	American Association of Nurserymen
AASHTO	American Association of State Highway and Transportation Officials
AC	Asphalt Cement (pavement), Alternating Current (traffic)
ACBFS	Air Cooled Blast Furnace Slag (aggregate)
ACI	American Concrete Institute
ACIA	Asynchronous Communications Interface Adapter (traffic controller)
ADT	Average Daily Traffic
ADTT	Average Daily Truck Traffic
AIC	Amps Interrupting Capacity
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANFO	Ammonium Nitrate and Fuel Oil
ANSI	American National Standards Institute
AOS	Apparent Opening Size (fabric)
AREA	American Railway Engineering Association
AMRL	AASHTO Material Reference Library
ASCE	American Society of Civil Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWG	American Wire Gauge
AWPA	American Wood Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
BBR	Bending Beam Rheometer (asphalt binder test)
BMP	Best Management Practice (erosion)
BOF	Basic Oxygen Furnace (aggregate)
BSG	Bulk Specific Gravity
BTEX	Benzene, toluene, ethyl benzene, and xylene (a soil test)
BUSTR	Bureau of Underground Storage Tank Regulations (Division of Fire Marshal)
C&MS	Construction and Material Specifications
CAPWAP	Case Pile Wave Analysis Program
CBAE	Cut Back Asphalt Emulsion
CCRL	Cement and Concrete Reference Laboratory
CCS	Crushed Carbonate Stone

CECI	Contactors Erosion Control Inspector
CFR	Code of Federal Regulations
CIE	Commission Internationale d'Eclairage (illumination)
CPE	Construction Project Engineer (LPA Local-let Project specific)
CPESC	Certified Professional in Erosion and Sediment Control
CRS	Cationic Rapid Set (asphalt emulsion)
CRSI	Concrete Reinforcing Steel Institute
CSS	Cationic Slow Set (asphalt emulsion)
CVN	Charpy V-notch (steel test)
CWT	Hundred Weight (100 lbs)
DC	Direct Current
DCA	District Construction Administrator
DCE	District Construction Engineer
DDD	District Deputy Director
DET	District Engineer of Tests
DGE	District Geotechnical Engineer
DLS	Data Logging System (traffic markings)
DNR	Department of Natural Resources
DRC	Dry Rodded Condition (asphalt aggregate test)
DSR	Dynamic Shear Rheometer (asphalt binder test)
DZA	Deficient Zone Average (concrete test)
EAF	Electric Arc Furnace
EDA	Earth Disturbing Activity
EEL	Edison Electric Institute
EIA	Electronic Industries Alliance
EPA	Environmental Protection Agency
EQS	Exceptional Quality Solids (compost)
FAA	Fine Aggregate Angularity (asphalt aggregate)
FCM	Fracture Critical Member (steel test)
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration, Department of Transportation
FRP	Fiber Reinforced Polymer
FSS	Federal Specifications and Standards, General Services Administration
GGBFS	Ground Granulated Blast Furnace Slag
GS	Granulated Slag
HDPE	High Density Polyethylene
HMWM	High Molecular Weight Methacrylate
ICEA	Insulated Cable Engineers Association
IEEE	Institute of Electrical and Electronic Engineers
IES	Illuminating Engineering Society
IMSA	International Municipal Signal Association
IPCEA	Insulated Power Cable Engineers Association
IPS	International Pipe Standard
ISSA	International Slurry Seal Association
ITE	Institute of Transportation Engineers
ITS	Intelligent Transportation System
IZEU	Inorganic Zinc Epoxy Urethane
JMF	Job Mix Formula
LED	Light Emitting Diode
LPA	Local Public Agency
LWT	Loaded Wheel Test (asphalt test)
MBF	Thousand Board Feet (wood)
MC	Medium Cure (asphalt emulsion)
MCB	Microchannel Bus (traffic controller)
MOV	Metal Oxide Varistor (traffic controller)
MPI	Magnetic Particle Inspection (steel test)
MSG	Maximum Specific Gravity (asphalt)
MTD	Maximum Theoretical Density (asphalt)
NACE	National Association of Corrosion Engineers

NCHRP	National Cooperative Highway Research Program
NEMA	National Electrical Manufacturers Association
NHI	National Highway Institute
NIST	National Institute of Standards and Technology
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
OAC	Ohio Administrative Code
ODOT	Ohio Department of Transportation
OEPA	Ohio Environmental Protection Agency
OH	Open Hearth (aggregate)
OHWM	Ordinary High Water Mark
OMM	Office of Materials Management (the Central Office Laboratory)
OMUTCD	Ohio Manual of Uniform Traffic Control Devices
ORC	Ohio Revised Code
ORDC	Ohio Rail Development Commission
OSHA	Occupational Safety and Health Administration
OTO	Office of Traffic Operations
OWPCA	Ohio Water Pollution Control Act
OZEU	Organic Zinc Epoxy Urethane
PAT	Project Average Thickness (concrete test)
PAV	Pressure Aging Vessel (asphalt binder test)
PB	Polybutylene (conduit)
PCC	Portland Cement Concrete
PCS	Petroleum Contaminated Soil
PDA	Pile Dynamic Analysis (steel piling)
PE	Polyethylene (conduit)
PG	Performance Grade (asphalt binder grading system)
pH	Potential of Hydrogen
PLS	Pure Live Seed
PRC	Person in Responsible Charge (representation of the Local Public Agency)
PVC	Polyvinyl chloride
QA	Quality Assurance
QC	Quality Control
QCFS	Quality Control Fabricator Specialist (structures)
QCP	Quality Control Program, or Plan, or Points (steel test)
QPL	Qualified Products List
RAP	Reclaimed Asphalt Pavement
RAS	Reclaimed Asphalt Shingles
RC	Rapid Cure (asphalt emulsion)
REA	Rural Electrification Act
RFI	Radio Frequency Interference (traffic controller)
RH	Relative Humidity
RMS	Root Mean Square (traffic controller)
RPCC	Recycled Portland Cement Concrete
RPM	Raised Pavement Marker (traffic)
RS	Rapid Set (asphalt emulsion)
RTFO	Rolling Thin-Film Oven (asphalt binder test)
RUS	Rural Utilities Service
SAE	Society of Automotive Engineers
SBA	Styrene Butadiene Amine
SBR	Styrene Butadiene Rubber
SBS	Styrene Butadiene Styrene
SCD	Standard Construction Drawing
SDS	Safety Data Sheets
SF	Standard Fabricated members (structures)
SI	International System of Units (Metric)
SM	AASHTOWare Project Sitemanager™
SMA	Stone Matrix Asphalt
SPD	Surge Protection Device (traffic controller)

SPST	Single Pole / Single Throw (traffic controller)
SS	Slow Set (asphalt emulsion)
SSD	Saturated Surface Dry (aggregate)
SSPC	Society for Protective Coatings
SWPPP	Storm Water Pollution Prevention Plan
TAP	Traffic Authorized Product
TCE	Trichloroethylene
TMPTA	Tri-methylolpropane Tri-acrylate (paint)
TNP	Total Neutralizing Power
TODS	Tourist-Oriented Directional Signs
TSEC	Temporary Sediment and Erosion Control
TSR	Tensile Strength Ratio (asphalt mix test)
UF	Unique Fabricated members (structures)
UL	Underwriters' Laboratories, Inc.
USACE	United States Army Corps of Engineers
USC	United States Code
VA	Verification Acceptance
VAC	Volts Alternating Current
VCA	Volume of Coarse Aggregate (asphalt mix test)
VECP	Value Engineering Change Proposal
VMA	Voids in the Mineral Aggregate
VME	VersaModule Eurocard (traffic controller)
WDT	Watchdog Timer
WEAP	Wave Equation Analysis (steel piling)
WPS	Welding Procedure Specification (steel test)
WZRP	Work Zone Raised Pavement Marker (traffic)
XCU	Explosion, Collapse and Underground

101.03 Definitions. The following terms or pronouns, when used in the Contract Documents, are defined as follows:

Advertisement. The public announcement, as required by law, inviting Bids for Work to be performed or materials to be furnished.

Award. The written acceptance by the PRC and/or CPE of a Bid.

Bid. The offer of a Bidder, on the prescribed form properly signed and guaranteed, to perform the Work and to furnish the labor and materials at the prices quoted.

Bid Documents. The Bid Documents include the Invitation for Bids, Addenda, Proposal, Expedite file, contract form and required bonds, Specifications, Supplemental Specifications, Special Provisions, general and detailed plans, Plan notes, standard construction drawings identified in the Plans, notice to Contractor, and any other document designated by the LPA as a Bid Document, all of which constitute one instrument.

Bidder. An individual, firm, or corporation submitting a Bid for the advertised Work, acting directly or through the duly authorized representative, and qualified as provided in ORC 5525.02 to 5525.09.

Bridge. A structure, including supports, erected over a depression or an obstruction, such as water, a highway, or a railway, and having a track or passageway for carrying traffic or other moving loads and having a length measured along the center of roadway of 10 feet (3.048 m) or more between undercopings of abutments or extreme limits of openings for multiple boxes.

A. Length. The length of a bridge structure is the over-all length measured along the centerline of the roadway surface.

B. Roadway Width. The clear width measured at right angles to the longitudinal centerline of the bridge between the bottom of curbs or guard timbers or, in the case of multiple heights of curbs, between the bottoms of the lower risers. For curb widths of 1 foot (0.3 m) or less, the roadway width is measured between parapets or railings.

Calendar Day or Day. Every day shown on the calendar.

Certified Test Data. A test report from a manufacturer's or an independent laboratory approved by the Director listing actual test results of samples tested for compliance with specified LPA requirements. The LPA will accept certified test data from manufacturers' laboratories if their products have been used satisfactorily on prior LPA contracts and their test data has been confirmed. Include a statement that the test data furnished is representative of the material furnished to a LPA project or to a supplier. The report is identified by number or date and identifies the LPA project or supplier to which

the material is shipped. Submit reports signed by a person having legal authority to act for the manufacturer or independent laboratory.

Change Order. A written order issued by the PRC and/or CPE to the Contractor, covering changes to the terms and conditions, plans and/or quantities, within or beyond the scope of the Contract and establishing the basis of payment and time adjustments for the work affected by the changes.

Claims. Disputes that are not settled through Steps 1 and 2 of the Dispute Resolution and Administrative Claim Process. The Dispute becomes a Claim when the Contractor submits a Notice of Intent to File a Claim.

Completion Date. The date, as shown in the Contract Documents, on which the Work contemplated shall be completed.

Construction Limits. These limits must encompass all Work. This includes removals, room for construction equipment to complete work, site access, etc.

Construction Project Engineer. Designee by the LPA to serve as the main contact for the Contractor, ODOT, FHWA, and any other agencies having an interest in the Project. The CPE is someone who is tasked with managing a Local-let LPA contract who is either a Professional Engineer or is working under the purview of a Professional Engineer.

Contract. The written agreement between the LPA and the Contractor setting forth the obligations of the parties, including, but not limited to, the performance of the Work and the basis of payment.

Contract Bond. The approved forms of security, executed by the Contractor and its Sureties, guaranteeing complete execution of the Work as required by the Contract Documents and the payment of all legal debts pertaining to the construction of the Project which security shall comply with and be subject to ORC 5525.16 and 5525.13, and related provisions.

Contract Documents. The Contract Documents include the Invitation for Bids, Addenda, Proposal, contract form and required bonds, Specifications, Supplemental Specifications, Special Provisions, general and detailed plans, Plan notes, standard construction drawings identified in the Plans, notice to contractor, Change Orders, Supplemental Agreements, Extra Work Contracts, "Accepted" and "Accepted as Noted" Working Drawings, and any other document designated by the LPA as a Contract Document, all of which constitute one instrument.

Contract Item (Pay Item). A specifically described unit of Work for which a price is provided in the Contract.

Contract Price. The amount of compensation bid by the Contractor for a Contract Item in the Proposal or the amount of compensation established for a Contract Item added or modified pursuant to the Contract Documents.

Contract Time. The number of workdays or calendar days, including authorized adjustments, allowed for completion of the Project. When a specified Completion Date is shown in the Contract Documents instead of the number of workdays or calendar days, completion of the Project shall occur on or before that date. Specified Completion Date and Calendar Day Contracts shall be completed on or before the day indicated even when that date is a Saturday, Sunday, or holiday.

Contractor. The individual, firm, or corporation contracting with the LPA for performance of prescribed Work, acting directly or through a duly authorized representative and qualified under the provisions of ORC 5525.02 to 5525.09 inclusive, and any amendments thereto.

County. The designated county in which the Work specified is to be done.

Culvert. Any structure not classified as a Bridge that provides an opening under the roadway.

Department. The Department of Transportation, State of Ohio.

Director. Administrative head of the Department appointed by the Governor.

Disputes. Disagreements, matters in question and differences of opinion between the Department's personnel and the Contractor.

District Testing. The Departments district testing laboratories.

Engineer. Duly authorized agent of the LPA acting within the scope of its authority for purposes of engineering and administration of the Contract. The Engineer can be either the Person in Responsible Charge (PRC) or the Construction Project Engineer (CPE). In managing the administration of the contract, the Engineer may confer with representatives of Industry including, but not limited to, the designer of record, landscape architects, environmental specialists, etc.

Engineered Drawings. A type of Working Drawing that requires the practice of engineering as defined in ORC 4733.01(E). Examples of Engineered Drawings include: Excavation Bracing Plans, Demolition Plans, Erection Plans, Falsework Plans, Cofferdam Plans, Causeway Plans, Jacking and Temporary Support Plans, Plans for Heavy Equipment on Structures, Plans for structures for Maintaining Traffic, and Corrective Work Plans.

Equipment. All machinery and equipment, together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper construction and acceptable completion of the Work.

Extra Work. An item of Work not provided for in the Contract as awarded but found essential to the satisfactory completion of the Contract within its intended scope.

Extra Work Contract. A Contract concerning the performance of Work or furnishing of materials involving Extra Work. Such Extra Work may be performed at agreed prices or on a force account basis as provided in ORC 5525.14.

Fabricator. The individual, firm, or corporation that fabricates structural metals or prestressed concrete members as an agent of the Contractor.

Final Inspector. An Engineer appointed by the DDD who inspects the completed Work and accepts it if it complies with the Contract Documents.

Inspector. The Engineer's authorized representative assigned to make detailed inspections of Contract performance.

Invitation for Bids. The invitation for Proposals for all Work on which Bids are required. Such Proposal will indicate with reasonable accuracy the quantity and location of the Work to be done or the character and quality of the material to be furnished and the time and place of the opening of Proposals.

Laboratory. The testing laboratories of the Department, including the Office of Materials Management (OMM) located at 1600 West Broad Street, Columbus, Ohio, and the District testing facilities.

Local. The LPA responsible for managing the construction contract and acting through its authorized representative.

Materials. Any materials or products specified for use in the construction of the Project and its appurtenances.

Partnering. A collaborative process for project cooperation and communication meant to achieve effective and efficient contract performance and completion of the Project within budget, on schedule, safely and with requisite quality in accordance with the contract.

Person in Responsible Charge (PRC). Serves as the agency contact for all issues or inquiries and ensures that all applicable state and federal regulations are followed on the project.

Plans. The drawings, standard construction drawings and supplemental drawings provided by the Department that show the location, character, dimensions, and details of the Work.

Prebid Question. A written inquiry submitted by a prospective bidder.

Professional Landscape Architect. A landscape architect registered with the Ohio Landscape Architects Board to practice landscape architecture in the State of Ohio.

Profile Grade. The trace of a vertical plane intersecting the top surface of the proposed wearing surface, usually along the longitudinal centerline of the roadbed. Profile grade means either elevation or gradient of such trace according to the context.

Project Limits. Project limits are points on the mainline centerline of construction where the proposed improvement, as described in the project description on the Title Sheet (excluding incidental construction), begins and ends

Project Right-of-Way. That portion of the Right-of-Way between the beginning and end of the Project.

Project. The specific section of the highway or route together with all appurtenances and Work to be performed thereon under the Contract.

Proposal. The approved form on which the LPA requires Bids to be prepared and submitted for the Work.

Proposal Guaranty. The security furnished with a Bid to guarantee that the Bidder will enter into the Contract if its Bid is accepted.

Questionnaire. The specified forms on which the Contractor shall furnish required information as to its ability to perform and finance the Work required under ORC 5525.01.

Reasonably Close Conformity. Reasonably close conformity means compliance with reasonable and customary manufacturing and construction tolerances where working tolerances are not specified. Where working tolerances are specified, reasonably close conformity means compliance with such working tolerances. Without detracting from the complete and absolute discretion of the Engineer to insist upon such tolerances as establishing reasonably close conformity, the Engineer may accept variations beyond such tolerances as reasonably close conformity where they will not materially affect the value or utility of the Work and the interests of the Department.

Registered Engineer. An engineer registered with the Ohio State Board of Registration for Professional Engineers and Surveyors to practice professional engineering in the State of Ohio

Registered Surveyor. A surveyor registered with the Ohio State Board of Registration for Professional Engineers and Surveyors to practice professional surveying in the State of Ohio.

Right-of-Way. A general term denoting land, property, or interest therein, usually in a strip, acquired for or devoted to a highway.

Road. A general term denoting a public way for purposes of vehicular travel, including the entire area within the Right-of-Way, as defined in ORC 5501.01.

Roadbed. The graded portion of a highway within top and side slopes, prepared as a foundation for the pavement structure and shoulder.

Roadside. The areas between the outside edges of the shoulders and the Right-of-Way boundaries. Unpaved median areas between inside shoulders of divided highways and infield areas of interchanges are included.

Roadside Development. Those items necessary to the highway that provide for the preservation of landscape materials and features; the rehabilitation and protection against erosion of all areas disturbed by construction through seeding, sodding, mulching, and the placing of other ground covers; such suitable planting; and other improvements as may increase the effectiveness and enhance the appearance of the highway.

Roadway. The portion of a highway within limits of construction.

Shop Drawings. Drawings accepted by the Contractor and submitted to the LPA that describe portions of the Work fabricated off site that are incorporated permanently with the project. LPA acceptance is not required.

Shoulder. The portion of the roadway contiguous to the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

Sidewalk. That portion of the roadway primarily constructed for the use of pedestrians.

Signatures on Contract Documents. All signatures on Contract Documents must meet the requirements of 102.06.

Special Provisions. Additions and revisions to the standard and Supplemental Specifications covering conditions peculiar to an individual Project.

Specifications. The directions, provisions, and requirements contained herein as supplemented by the Supplemental Specifications and Special Provisions.

State. The State of Ohio acting through its authorized representative.

Street. A general term denoting a public way for purpose of vehicular travel, including the entire area within the Right-of-Way.

Structures. Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, sewers, service pipes, underdrains, foundation drains, and other features that may be encountered in the Work and not otherwise classed herein.

Subcontractor. An individual, firm, or corporation to whom the Contractor sublets part of the Contract to be performed on the job site, who prior to such undertaking receives the written consent of the Director, and who is qualified under ORC 5525.02 through 5525.09 inclusive.

Subgrade. The portion of a Roadbed upon which the pavement structure and shoulders are constructed.

Substructure. All of that part of the structure below the bearings of simple and continuous spans, skewbacks of arches, and tops of footings of rigid frames, together with backwalls and wings.

Superintendent. The Contractor's authorized representative in responsible charge of the Work.

Superstructure. The entire structure except the Substructure.

Supplement. A list of requirements for fabrication plants, methods of test, or other miscellaneous requirements that are maintained on file in the Office of the Director.

Supplemental Agreement. A written agreement executed by the Contractor and by the PRC and/or CPE covering necessary alterations.

Supplemental Specifications. Detailed specifications supplemental to or superseding these Specifications.

Surety. The corporation, partnership, or individual, other than the Contractor, executing a bond furnished by the Contractor.

Titles (or Headings). The titles or headings of the sections and subsections herein are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.

Waters of the United States. Waters that are under the jurisdiction of the Corps of Engineers under the Clean Water Act as defined by 33 CFR Ch. II Part 328, which as applied to Ohio means: the Ohio River and Lake Erie and any other river, stream, creek, lake, pond, or wetland that drains directly or indirectly into the Ohio River or Lake Erie.

Work. All labor, materials, equipment, tools, transportation, supplies, and other incidentals and all tasks that comprise the project or any portion thereof, as described by the Contract Documents.

Work Limits. Work Limits are the extreme limits of the contractor's responsibility on a project, including all temporary and incidental construction, with the exception of work zone traffic control devices required for maintenance of traffic.

Workday. A calendar day that the Contractor normally works.

Working Drawings. Contractor submitted drawings for work, not otherwise defined in the Bid Documents, and require LPA acceptance. Examples of Working Drawings include: Engineered Drawings, installation plans, certified drawings, and any other supplementary plans or similar data that the Contractor is required to submit for acceptance.

101.04 Interpretations. In order to avoid cumbersome and confusing repetition of expressions in these Specifications, it is provided that whenever anything is, or is to be, done, if, as, or, when, or where "contemplated, required, determined, directed, specified, authorized, ordered, given, designated, indicated, considered necessary, deemed necessary, permitted, reserved, suspended, established, approval, approved, disapproved, acceptable, unacceptable, suitable, accepted, satisfactory, unsatisfactory, sufficient, insufficient, rejected, or condemned," it shall be understood as if the expression were followed by the words "by the Engineer" or "to the Engineer."

102 BIDDING REQUIREMENTS AND CONDITIONS

102.01 Prequalification of Bidders. A Bidder must be prequalified by the Department according to ORC Chapter 5525 and the rules and regulations governing prequalification in order to submit a Bid. Upon request, the Department will provide a prequalification application, applicable rules and regulations, and other relevant information. For prospective Bidders that are not yet prequalified, furnish the Department with a properly completed prequalification application at least 30 days before the date specified for the receipt of Bids. The prequalification certificate is the Bidder's license to Bid and perform construction for the Department.

Subcontractors are not subject to the prequalification requirement unless otherwise specified by the LPA. The Prime Contractor will perform no less than 30 percent of the total original contract price unless a greater percentage is specified.

For foreign Contractors, refer to ORC 5525.18 and Ohio Administrative Rule 5501:2-3-07.

102.02 Contents of Bid Documents. Use the Proposal to prepare and submit Bids for the Work. Upon request, the LPA will provide Bid Documents that include or reference the following:

- A. Location and description of the Project.
- B. Estimate of quantities and description of the Work.
- C. Time to complete the Work.
- D. Amount of the Proposal Guaranty.
- E. LPA's deadline for receiving a completed Bid.
- F. Schedule of contract items.
- G. Standard Specifications, Special Provisions, Supplemental Specifications, and the Plans.
- H. Proposal.

102.03 Issuance of Proposals.

A. General. Upon request, the LPA will provide applicable rates and other relevant information for obtaining bidding information and submitting a Bid.

B. LPA Will Not Issue. The LPA may refuse to sell or issue Bid Documents to a prospective Bidder for any of the following reasons:

1. The prospective Bidder owes the LPA for previously issued plans.

2. The prospective Bidder has defaulted on previous contracts.
3. The prospective Bidder is debarred from bidding on and receiving Department contracts.
4. The prospective Bidder is currently in the debarment process.

102.04 Interpretation of Quantities in Proposal. The quantities in the Bid Documents are approximate and the LPA uses them for the comparison of Bids only.

The LPA will only pay the Contractor for the actual quantities of Work performed and accepted according to the Contract Documents. The LPA may increase, decrease, or omit the scheduled quantities of Work as provided in 109.04 without invalidating the Bid prices.

102.05 Examination of Bid Documents and Project Site and Submission of Prebid Questions. Carefully examine the Bid Documents and perform a reasonable site investigation before submitting a Bid. Submitting a Bid is an affirmative statement that the Bidder has investigated the Project site and is satisfied as to the character, quality, quantities, and the conditions to be encountered in performing the Work. A reasonable site investigation includes investigating the Project site, borrow sites, hauling routes, and all other locations related to the performance of the Work.

When available, the LPA will include in the Contract Documents or provide for the Bidder's review at the LPA's offices or website, one or more of the following:

- A. Record drawings.
- B. Available information relative to subsurface exploration, borings, soundings, water levels, elevations, or profiles.
- C. The results of other preliminary investigations.

A reasonable site investigation includes a review of these documents.

Should a question arise at any time during the examination of Bid Documents or investigation of the site the Bidder may seek clarification by submitting a Prebid Question. Responses to Prebid Questions by the LPA are not revisions to the Bidding Documents and are not binding.

102.06 Preparation of Bids.

Prepare a Bid according to this subsection and the requirements found in the Bid Documents. Properly complete the file and submit it to the County Commissioners.

Provide a unit price for each item listed in the Proposal. Calculate and place the products for the respective unit prices and quantities in the "Bid Amount" column. For a lump sum item, place the same price in the "Unit Price" column and in the "Bid Amount" column pertaining to that item. Indicate the total Bid amount by adding the values entered in the "Bid Amount" column for the listed items. Submit the Proposal to the County Commissioners. Properly execute the Proposal by completing the miscellaneous section and attaching the required signatures in the space provided in the Proposal.

102.07 Duty to Notify of Errors in Bid Documents. Notify the LPA of errors and omissions in the Bid Documents. The Contractor's duty to disclose errors and omissions is not only a bidding requirement but is also a legal requirement that cannot be ignored.

Failure to provide the required notification prior to the opening of bids shall constitute a waiver by the Contractor and does not obligate the LPA for any costs based upon any apparent or patent ambiguity arising from insufficient data or obvious errors in the Bid documents. Knowingly withholding information regarding an error or omission in the Bid Documents, or intentionally misrepresenting an item of Work for financial or competitive gain may result in civil or criminal penalties in excess of the value of the item bid.

102.08 Unbalanced Bidding. Bid all items correctly and price each quantity as indicated in the Bid Documents. The LPA will reject a Mathematically Unbalanced Bid if the Bid is also Materially Unbalanced. A Mathematically Unbalanced Bid is a Bid containing lump sum or unit price items that do not include reasonable labor, equipment, and material costs plus a reasonable proportionate share of the Bidder's overhead costs, other indirect costs, and anticipated profit. A Materially Unbalanced Bid is when the LPA determines that an award to the Bidder submitting a Mathematically Unbalanced Bid will not result in the lowest ultimate cost to the LPA.

102.09 Proposal Guaranty. The LPA will reject a Bid submitted without a Proposal Guaranty in the amount designated and payable to the Director. Submit the required Proposal Guaranty in one of the following forms:

- A. Properly executed project Bid bond submitted on the LPA's form.
- B. Certified check drawn on the account of the Bidder submitting the Bid.
- C. Cashier's check.

When submitting a Bid bond, ensure that the Surety is licensed to do business in the State.

If the LPA invites alternate Bids and the Bidder elects to Bid more than one alternate, the Bidder may submit one Proposal Guaranty in the amount required for a single alternate. The Proposal Guaranty covers each individual Bid.

If the LPA invites combined Bids and the Bidder elects to Bid only on one package, then the Bidder must submit only one Proposal Guaranty. If the Bidder bids on the combined Bid package, the Bidder must submit a Proposal Guaranty in the amount required for the combined Bid. The combined Proposal Guaranty covers each individual Bid.

102.10 Delivery of Bid.

Unless otherwise indicated in the Proposal, all Bids must be physically submitted to the County Commissioners Office. The Commissioner's will accept Bids until the time and date designated in the Notice to Bidders. The County Engineer will return Bids received after the designated time to the Bidders unopened. The County Engineer will return all Bids not prepared and submitted in accordance with the Proposal.

102.11 Withdrawal of Bids.

After Bids are opened, ORC 5525.01 requires that a Bidder identify a mistake in its Bid within 48 hours of the Bid opening. After Bids are opened the Bidder must provide a written request to withdraw a Bid already filed with the County Engineer. Any Bidder for whom a request to withdraw its Bid is approved by the County Commissioners will not be permitted to participate in any manner in a contract awarded for that project for which the Bid was withdrawn.

102.12 Combination Proposals. The LPA may elect to issue Bid Documents for projects in combination or separately, so that Bids may be submitted either on the combination or on separate units of the combination. The LPA reserves the right to make awards on combination Bids or separate Bids to the best advantage of the LPA. The LPA will not consider combination Bids, other than those it specifically identifies in the Bid Documents. The LPA will write separate Contracts for each individual Project included in the combination.

102.13 Public Opening of Bids. The LPA will publicly open Bids at the time and place indicated in the notice to Contractors. The LPA will announce the total Bid amount for each Bid.

Bidders or their authorized agent and other interested persons are invited to the opening.

The LPA may postpone the receipt of Bid time or the opening of Bids time. If the LPA changes the hour or the date of the receipt of Bids or the opening of Bids, it will issue an addendum or public notice to notify prospective Bidders.

102.14 Disqualification of Bidders.

The County Engineer will declare a Bid non-responsive and ineligible for award when any of the following occur:

- A. The Bidder lacks sufficient prequalification work types or dollars to be eligible for award.
- B. The Bidder fails to furnish the required Proposal Guaranty in the proper form and amount.
- C. The Bid contains unauthorized alterations or omissions.
- D. The Bid contains conditions or qualifications not provided for in the Bid Documents.
- E. The Proposal is not prepared as specified.
- F. A single entity, under the same name or different names, or affiliated entities submits more than one Bid for the same Project.
- G. The Bidder fails to submit a unit price for each contract item listed, except for lump sum items where the Bidder may show a price in the "Bid Amount" column for that item.
- H. The Bidder fails to submit a lump sum price where required.
- I. The Bidder fails to submit a complete Expedite file using the software specified in the Proposal.
- J. The Bidder is debarred from submitting Bids.
- K. The Bidder has defaulted, has had a Contract terminated for cause by the Department, has either agreed not to Bid or has had debarment proceedings initiated against the Bidder's company and/or its key personnel.
- L. The Bidder submits its Bid or Proposal Guaranty on forms other than those provided by the Department.
- M. The Bidder fails to properly complete the supplemental questionnaire section of the Expedite file.
- N. The Bidder submits a Materially Unbalanced Bid as defined by 102.08.
- O. The Bidder fails to acknowledge addenda.
- P. The Department finds evidence of collusion.

Q. Any other omission, error, or act that, in the judgment of the Department, renders the Bidder's bid non-responsive

102.15 Material Guaranty. Before any Contract is awarded, the LPA may require the Bidder to furnish a complete statement of the origin, composition, and manufacture of any or all Materials to be used in the construction of the Work together with samples. The LPA may test the samples as specified in these Specifications to determine their quality and fitness for the Work.

102.16 Certificate of Compliance with Affirmative Action Programs. Before any Contract is awarded, the LPA will require the Bidder to furnish a valid Certificate of Compliance with Affirmative Action Programs, issued by the State EEO Coordinator.

102.17 Drug-Free Safety Program. During the life of this project, the Contractor and all its Subcontractors, that provide labor on the Project site, must be enrolled in and remain in good standing in the Ohio Bureau of Worker's Compensation ("OBWC") Drug-Free Safety Program ("DFSP") or a comparable program approved by the OBWC.

In addition to being enrolled in and in good standing in an OBWC-approved DFSP or a comparable program approved by the OBWC, the LPA requires each Contractor and Subcontractor that provides labor, to subject its employees who perform labor on the project site to random drug testing of 5 percent of its employees. The random drug testing percentage must also include the on-site supervisors of the Contractors and Subcontractors. Upon request, the Contractor and Subcontractor shall provide evidence of required testing to the LPA.

Each Subcontractor shall require all lower-tier Subcontractors that provides labor on the project site with whom the Subcontractor is in contract for the Work to be enrolled in and be in good standing in the OBWC-approved DFSP prior to a lower-tier Subcontractor providing labor at the Site.

The LPA will declare a bid non-responsive and ineligible for award if the Contractor is not enrolled and in good standing in the Ohio Bureau of Workers' Compensation's Drug-Free Safety Program (DFSP) Discount Program or a similar program approved by the Bureau of Workers' Compensation within 8 days of the bid opening. Furthermore, the LPA will deny all requests to sublet when the subcontractor does not comply with the provisions of this section.

Failure of the Contractor to require a Subcontractor to be enrolled in and be in good standing in the an OBWC-approved DFSP prior to the time that the Subcontractor provides labor at the Site, shall result in the Contractor being found in breach of the Contract and that breach shall be used in the responsibility analysis of that Contractor or the Subcontractor who was not enrolled in a program for future contracts with the State for five years after the date of the breach.

103 AWARD AND EXECUTION OF CONTRACT

103.01 Consideration of Proposals. After opening and announcing the Bids, the LPA will compare the Bidders' proposed prices. The proposed price is the summation of the products of the estimated quantities shown in the Proposal and the unit Bid prices. If the amount shown for the proposed product differs from the actual product of the unit Bid price and the estimated quantity, then the actual product will govern.

The LPA may reject any or all Bids, waive technicalities, or advertise for new Bids without liability to the LPA.

103.02 Award of Contract.

The County Engineer will award a Contract or reject Bids within 10 days after Bid opening. The County Engineer will mail a letter to the address on the Bid notifying the successful Bidder of Bid acceptance and Contract award. The County Engineer will award to the lowest competent and responsible bidder. The County Engineer will not award a Contract until it completes an investigation of the apparent low Bidder. The County Engineer will not award a Contract for an amount greater than 20 percent more than the County Engineer's estimate

103.03 Cancellation of Award. The LPA may cancel a Contract award at any time before all parties sign the Contract without liability to the LPA.

103.04 Return of Proposal Guaranty. Immediately after the opening and checking of Bids, the LPA will return all Proposal Guaranties provided in the form of a certified check or cashier's check, except to the three lowest Bidders. Within 10 days after opening bids, the LPA will return the Proposal Guaranties of the two remaining unsuccessful Bidders. After the successful Bidder submits the signed Contract, Contract Bonds, and other Contract Documents, and after the LPA signs the Contract, the LPA will return the Proposal Guaranty to the successful Bidder. The LPA will not return Bid bonds.

103.05 Requirement of Contract Bond. Furnish Contract Bonds within 10 days after receiving notice of award. Furnish Contract Bonds to the LPA and ODOT shall be names as an obligee on the prescribed form, in the amount of the Contract, and according to ORC 5525.16.

103.06 Execution of Contract.

Sign and return the Contract, along with the certificate of compliance, Contract Bonds, and other required Contract Documents, within 10 days after notice of award. The County Engineer does not consider a proposal binding until the County Commissioner signs the Contract. If the County Commissioner does not sign the Contract within 20 days after receiving the successful Bidder's signed Contract, certificates, Contract Bonds, and other Contract Documents, the successful Bidder may withdraw the Bid without prejudice.

103.07 Failure to Execute Contract. If the successful Bidder fails to sign the Contract and furnish the Contract Bonds, the LPA will have just cause to cancel the award. The successful Bidder shall forfeit the Proposal Guaranty to the LPA, not as a penalty, but as liquidated damages. The LPA may award the Contract to the next lowest responsive Bidder, re-advertise the Work, or take any other action decided by the PRC and/or CPE.

104 SCOPE OF WORK

104.01 Intent of the Contract Documents. The intent of the Contract Documents is to provide for the construction and completion of the Work. Perform the Work according to the Contract Documents.

104.02 Revisions to the Contract Documents.

A. General. The LPA reserves the right to revise the Contract Documents at any time. Such revisions do not invalidate the Contract or release the Surety, and the Contractor agrees to perform the Work as revised.

The provisions of this section are subject to the limitation of ORC 5525.14.

B. Differing Site Conditions. During the progress of the Work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract Documents or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents, are encountered at the site, notify the Engineer as specified in 108.02.F of the specific differing conditions before they are disturbed or the affected Work is performed.

Upon notification, the Engineer will investigate the conditions and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any Work under the Contract, the LPA will make an adjustment and modify the Contract as specified in 108.06 and 109.05. The Engineer will notify the Contractor of the determination whether or not an adjustment of the Contract is warranted.

C. Suspension of Work. If the performance of all or any portion of the Work is suspended or delayed by the Engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation or time is due as a result of such suspension or delay, notify the Engineer as specified in 108.02.

Upon receipt of notice, the Engineer will evaluate the Contractor's request. If the Engineer agrees that the cost or time required for the performance of the Work has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Engineer will make an equitable adjustment (excluding profit) and modify the contract as specified in 108.06 and 109.05. The Engineer will notify the Contractor of its determination whether or not an adjustment to the Contract Documents is warranted. Failure of the Engineer to suspend or delay the Work in writing does not bar the Contractor from receiving a time extension or added compensation according to 108.06 or 109.05.

The LPA will not make an adjustment under this subsection in the event that performance is suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this Contract.

D. Significant Changes in Character of the Work. The Engineer may increase or decrease quantities and alter the Work as necessary to complete the Project. The Engineer will make appropriate adjustments according to 108.06 and 109.05, if such alterations significantly change the character of the Work.

If the Contractor disagrees as to whether an alteration constitutes a significant change, use the notification procedures specified in 108.02.F.

The term "significant change" is defined as follows:

1. when the character of the Work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
2. when the product of the quantity in excess of the estimated quantity of a contract item and the unit price exceeds the limits set forth in Table 104.02-1.

TABLE 104.02-1

Contract Price	Contract Limits
Up to \$500,000	\$25,000
\$500,001 to \$2,000,000	5% of Total Contract Price
Over \$2,000,000	\$100,000

A quantity underrun is defined as follows:

- a. the estimated quantity of a contract item exceeds four units (this minimum quantity does not apply to pavement markings measured in units of miles), and
- b. the decrease in quantity of any unit price Contract Item exceeds 25 percent of the estimated quantity, and
- c. the total of all such adjustments for all Contract Items is more than \$400.

Then after the determination of final quantities according to 109.12.C, the Engineer will adjust the unit prices for the affected Contract item by multiplying the bid unit price by the factor obtained from Table 104.02-2.

TABLE 104.02-2

% Decrease	Factor	% Decrease	Factor
25	1.08	57	1.33
26 to 27	1.09	58	1.35
28 to 29	1.10	59	1.36
30 to 31	1.11	60	1.38
32 to 33	1.12	61	1.39
34 to 35	1.13	62	1.41
36	1.14	63	1.43
37 to 38	1.15	64	1.44
39	1.16	65	1.46
40 to 41	1.17	66	1.49
42	1.18	67	1.51
43	1.19	68	1.53
44 to 45	1.20	69	1.56
46	1.21	70	1.58
47	1.22	71	1.61
48	1.23	72	1.64
49	1.24	73	1.68
50	1.25	74	1.71
51	1.26	75	1.75
52	1.27	76	1.79
53	1.28	77	1.84
54	1.29	78	1.89
55	1.31	79	1.94
56	1.32	80 and over	2.00

When the increase in quantity or decrease in quantity of any unit price contract item does not exceed the limits set forth in Tables 104.02-1 and 104.02-2, the change is considered a minor change. The LPA will pay for minor changes in the Work at the unit bid price.

In place of 104.02(D) above, the LPA has the option to use the following language from 23 CFR 635.109(a)(3)

Significant changes in the character of work.

- (i) The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.
- (ii) If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.

- (iii) If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.
- (iv) The term "significant change" shall be construed to apply only to the following circumstances:
 - (A) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
 - (B) When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

E. Eliminated Items. The LPA may partially or completely eliminate contract items.

The LPA will only make an adjustment to compensate the Contractor for the reasonable cost incurred in preparation to perform significantly changed work as set forth in 104.02.D or work completely eliminated prior to the date of the Engineer's written order to significantly change or completely eliminate the Work. The adjustment will be determined according to 109.04 and 109.05. Such payment will not exceed the price of the Contract Item.

The LPA will not seek a savings for maintaining traffic, mobilization, and construction layout stakes items for Eliminated Items of Work, unless there is a significant change.

F. Extra Work. Perform Extra Work as directed by the Engineer. The LPA will pay for Extra Work as specified in 109.05. Time extensions, if warranted, will be determined according to 108.06.

G. Unilateral Authority to Pay. The LPA has unilateral authority to pay the Contractor sums it determines to be due to the Contractor for work performed on the project. This unilateral authority to pay by the LPA does not preclude or limit the rights of the LPA and the Contractor to negotiate and agree to the amounts to be paid to the Contractor.

104.03 Rights in and Use of Materials Found on the Work. Upon obtaining the Engineer's approval, the Contractor may use material, such as stone, gravel, or sand, found in the plan excavation for another Contract Item. The LPA will pay for both the excavation of the material under the corresponding Contract Item and for the placement of the excavated material under the Contract Item(s) for which the excavated material is used. Excavate or remove material only from within the grading limits, as indicated by the slope and grade lines.

Obtain written permission from the Engineer according to 107.11.A.

104.04 Cleaning Up. Maintain the Project in a presentable condition. Remove all rubbish, layout stakes, sediment control devices as directed by the Engineer, excess material, temporary structures, and equipment, including stream channels and banks within the Right-of-Way at drainage structures, and all borrow and waste areas, storage sites, temporary plant sites, haul roads, and other ground occupied by the Contractor in connection with the Work. Establish suitable vegetative cover in these areas by seeding and mulching according to Item 659, except for cultivated fields. Leave the Project site in an acceptable condition as determined by the Engineer. The cost of cleanup is incidental to all contract items. The LPA may withhold 10 percent of the Bid amount for the mobilization contract item, if included, until performance under this section is complete. See 624.04.

105 CONTROL OF WORK

105.01 Authority of the Engineer. The Engineer will decide questions concerning all of the following:

- A. The quality and acceptability of Materials furnished.
- B. The quantity of Work performed.
- C. The Contractor's rate of progress.
- D. The interpretation of the Contract Documents.
- E. Acceptable fulfillment of the Contract.
- F. Contractor compensation.

The Engineer may suspend all or part of the Work when the Contractor fails to correct conditions that are unsafe for the workers or the general public, fails to comply with the Contract Documents, or fails to comply with the Engineer's orders. The Engineer may suspend the Work due to adverse weather conditions, conditions considered adverse to the prosecution of the Work, or other conditions or reasons in the public interest.

The Engineer's acceptance does not constitute a waiver of the LPA's right to pursue any and all legal remedies for defective work or work performed by the Contractor in an un-workmanlike manner.

105.02 Plans and Working Drawings. The Plans show details of structures, the lines and grades, typical cross-sections of the Roadway, and the location and design of structures. Keep at least one set of Plans at the Project at all times.

Prepare working drawings when required by the Contract Documents and after verifying applicable field and plan elevations, dimensions, and geometries. Where Work consists of repairs, extension, or alteration of existing structures, take measurements of existing structures to accurately join old and new Work.

Unless otherwise indicated, the LPA will review working drawing submittals to ensure conformance with the Contract and to provide the Contractor a written response to document the results of its review as follows:

- A. "ACCEPTED."** The LPA accepts the submittal for construction, fabrication, or manufacture.
- B. "ACCEPTED AS NOTED."** The LPA accepts the submittal for construction, fabrication, or manufacture, subject to the Contractor's compliance with all LPA comments or corrections to the submittal. If also marked "RESUBMIT," the LPA still accepts the submittal, but requires the Contractor to provide a corrected submittal to the LPA.
- C. "NOT ACCEPTED."** The LPA does not accept the submittal. The submittal does not conform to Contract requirements. Do not begin construction, fabrication, or manufacture of Work included in the submittal. Revise the submittal to comply with LPA comments or corrections and Contract requirements and provide the revised submittal to the LPA for another review.

"Accepted" and "Accepted as Noted" Working Drawings are Contract Documents as defined in 101.03. The LPA's acceptance will not relieve the Contractor of responsibility to complete the Work according to the Contract nor relieve a signatory engineer's responsibility as defined by OAC 4733-23. Include the cost of furnishing Working Drawings in the cost of the Work they cover.

105.03 Conformity with Contract Documents. Perform all Work and furnish all Materials in reasonably close conformity with the lines, grades, cross-sections, dimensions, and material requirements as shown on the Plans and as specified.

If the PRC and/or CPE determines the Work is not in reasonably close conformity with the Contract Documents and determines the Contractor produced reasonably acceptable Work, the PRC and/or CPE may accept the Work based on engineering judgment. The PRC and/or CPE will document the basis of acceptance in a Change Order that provides for an appropriate adjustment to the Contract Price of the accepted Work or Materials. If the PRC and/or CPE determines the Work is not in reasonably close conformity with the Contract Documents and determines the Work is inferior or unsatisfactory, remove, replace, or otherwise correct the Work at no expense to the LPA.

105.04 Coordination of the Contract Documents. The Contract Documents are those defined in 101.03. A requirement appearing in one of these documents is as binding as though it occurs in all. The Engineer will resolve discrepancies using the following descending order of precedence:

- A.** Addenda.
- B.** Proposal and Special Provisions.
- C.** Plans.
- D.** Supplemental Specifications.
- E.** Standard Construction Drawings.
- F.** Standard Specifications.

Immediately notify the Engineer upon discovering any latent error or omission in the Contract Documents.

105.05 Cooperation by Contractor.

The County Engineer will supply the Contractor with one set of the Contract Documents, except for the standard construction drawings, which will only be supplied if requested. The County Engineer will provide only one copy of these Specifications. Provide the constant attention necessary to progress the Work according to the Contract Documents. Cooperate with the Engineer, inspectors, and all other Contractors on or adjacent to the Project.

105.06 Superintendent. Provide a Superintendent for the Project that is available and responsive at all times and is responsible for all aspects of the Work, irrespective of the amount of subcontract Work. The Superintendent must be capable of reading and understanding the Contract Documents and experienced in the type of Work being performed. The Superintendent shall receive instructions from the Engineer or the Engineer's authorized representatives. The

Superintendent shall promptly execute the Engineer's orders or directions and promptly supply the required materials, equipment, tools, labor, and incidentals.

105.07 Cooperation with Utilities. Unless otherwise provided for by the Contract Documents, the LPA will direct the utility owners to relocate or adjust water lines, gas lines, wire lines, service connections, water and gas meter boxes, water and gas valve boxes, light standards, cableways, signals, and all other utility appurtenances within the limits of the proposed construction at no cost to the Contractor.

If the Contractor is directed by a utility company to perform any work not specifically contained in this note, the LPA will not compensate the Contractor for this work unless the LPA approves the request in writing before the work begins. If the work is not preapproved by the LPA, the Contractor will be responsible for obtaining reimbursement for its work from the utility company which directed the Contractor to perform the work.

In the event that the Contractor requests that additional work, not specifically contained in this note, be performed by a utility company, the Contractor will be responsible for reimbursing the utility company for the additional work unless the LPA has agreed in writing to pay for the additional work before the work begins.

The Contract Documents will indicate various utility items and indicate a time frame or date when the LPA expects the owners to complete utility relocation or adjustment. Provide utility owners adjusting facilities during construction with adequate notification of the scheduled Work to prevent conflict with the Contractor's schedule of operations.

When bidding, consider all permanent and temporary utility appurtenances in present and relocated positions as shown in the Contract Documents.

According to ORC 153.64 and at least 2 Workdays prior to commencing construction operations in an area that may affect underground utilities shown on the Plans, notify the Engineer, the registered utility protection service, and the owners that are not members of the registered utility protection service.

The owner of the underground utility shall, within 48 hours, excluding Saturdays, Sundays, and legal holidays, after notice is received, start staking, marking, or otherwise designating the location, course, ± 2 feet (± 0.6 m), together with the approximate depth of the underground utilities in the construction area.

If the utility owners fail to relocate or adjust utilities as provided for in the Contract Documents and the Contractor sustains losses that could not have been avoided by the judicious handling of forces, equipment, and plant, or by reasonable revisions to the schedule of operations, then the Engineer will adjust the Contract according to 108.06 and 109.05.

105.08 Cooperation Between Contractors. At any time, the LPA may contract for other work on or near the Project.

Separate Contractors working within the limits of the Project shall conduct their work without interfering with or hindering the progress or completion of Work being performed by other Contractors and shall cooperate with each other as directed by the Engineer.

105.09 Authority and Duties of the Inspector. Inspectors are authorized to inspect the Work and the preparation, fabrication, or manufacture of materials. Inspectors are not authorized to alter or waive requirements of the Contract Documents. Inspectors are authorized to notify the Contractor of Work that does not conform to the Contract; reject materials that do not conform to Specification requirements; and until the issue is decided by the Engineer, suspend portions of the Work if there is a question regarding the Contract Documents, use of unapproved material, or safety. Inspectors are not obligated or authorized to provide direction, superintendence, or guidance to the Contractor, its crew, its subcontractors, or suppliers to accomplish the Work.

Any action or inaction of the Inspector does not constitute a waiver of the LPA's right to pursue any and all legal remedies for defective work or work performed by the Contractor in an un-workmanlike manner.

105.10 Inspection of Work. The Engineer may inspect materials and the Work. Provide the Engineer or the Engineer's representative access to the Work, information, and assistance necessary to conduct a complete inspection. Notify the Engineer at least 24 hours prior to all required inspections.

When directed by the Engineer, remove or uncover completed Work to allow inspection. After the Engineer's inspection, restore the Work according to the requirements of the Contract Documents. If the inspected Work conformed to the requirements of the Contract Documents, the LPA will pay for uncovering or removing and restoring the Work as Extra Work according to 109.05. If the inspected Work did not conform to the Contract Documents, the LPA will not pay for uncovering or removing and restoring the Work.

The LPA shall have the discretion to dictate the level of inspection for any item of work. The Contractor bears sole responsibility for the quality of work and compliance with the contract regardless of the LPA's level of inspection.

The LPA's failure to identify defective Work or material shall not, in any way, prevent later rejection when defective Work or material is discovered, or obligate the LPA to grant acceptance under 109.11 or 109.12.

Inspection of Work may include inspection by representatives of other government agencies or railroad corporations that pay a portion of the cost of the Work. This inspection will not make other government agencies or railroad corporations a party to the Contract and will not interfere with the rights of the Contractor or LPA.

105.11 Removal of Defective and Unauthorized Work. Work that does not conform to the requirements of the Contract is defective.

Unless the LPA formally accepts defective Work according to 105.03, immediately remove and replace defective Work.

Unauthorized Work is Work done contrary to the instructions of the Engineer, beyond the plan lines, or any extra work done without the LPA's permission. The LPA will not pay for unauthorized Work. The Engineer may order the Contractor to remove or replace unauthorized Work at no expense to the LPA.

If the Contractor fails to comply with the Engineer's orders under the provisions of this subsection, the PRC and/or CPE may correct or remove and replace defective or unauthorized Work and deduct the costs from the Contract Price.

105.12 Load Restrictions. Comply with all legal load restrictions when hauling materials on public roads.

Operate equipment of a weight or so loaded as to not cause damage to structures, to the roadway, or to other types of construction. Comply with subsection 501.05.B.6 for allowed loads on bridges.

Do not use off road vehicles on bases or pavements unless permitted by the PRC and/or CPE in writing.

Do not haul on concrete pavement, base, or structures before the expiration of the curing period.

Do not exceed the legal load limits in this section unless permitted by the PRC and/or CPE in writing.

105.13 Haul Roads. Prior to hauling equipment or materials, provide written notification to the Engineer of the specific roads or streets on the haul route. If the haul route includes roads and streets that are not under the jurisdiction and control of the LPA and the PRC determines that LPA controlled roads are not available or practical for a haul route, the Contractor may use local roads and streets that are not restricted by local authorities. If the PRC determines that LPA controlled roads are available and practical for a haul route, revise the proposed haul route provided in the original written notification and resubmit to the PRC.

If the Engineer determines that haul route roads were properly used during construction to haul equipment and materials and that the haul route roads were damaged, then the Engineer may order the Contractor to perform immediate and practical repairs to ensure reasonably normal traveling conditions. The Engineer will pay for repairs according to applicable provisions of 109.04 and 109.05.

The Contractor shall not file a claim for delays or other impacts to the Work caused by disputes with the local authorities regarding the use of local roads or streets as haul routes. The Contractor shall save the LPA harmless for any closures or hauling restrictions outside the Project limits beyond the control of the LPA.

105.14 Maintenance During Construction. Maintain the Work during construction and until Final Inspector accepts the work under 109.12, except for portions of the Work accepted under 109.11. The Contractor is responsible for damage done by its equipment.

Maintain the previous courses or subgrade during all construction operations, when placing a course upon other courses of embankment, base, subgrade, concrete or asphalt pavement, or other similar items previously constructed. This maintenance includes, but is not limited to draining, re-compacting, re-grading, or if destroyed, the removal of Work previously accepted by the LPA.

Maintain the Post Construction Storm Water Best Management Practice (BMP) features. Prevent sediment laden surface water from coming in contact with the BMP features during construction.

Maintain the Work during construction and before acceptance of the Work under 109.12, except for portions of the Work accepted under 109.11. The LPA will not provide additional compensation for maintenance work.

105.15 Failure to Maintain Roadway or Structure. If the Contractor, at any time, fails to comply with the provisions of 105.14, the Engineer will immediately notify the Contractor of such noncompliance. If the Contractor fails to remedy unsatisfactory maintenance within 24 hours after receipt of such notice, the Engineer may immediately proceed to maintain the Project, and deduct the entire cost of this maintenance from monies due or to become due the Contractor on the Contract.

105.16 Borrow and Waste Areas. Prior to beginning borrow or wasting operations, obtain the Engineer's written approval of a detailed operation plan that addresses the following concerns:

- A. Control of drainage water.
- B. Cleanup, shaping, and restoration of disturbed areas.
- C. Disposal of regulated materials.
- D. Avoidance of regulated areas.
- E. Excavation and filling of waste and borrow areas.
- F. Saving of topsoil.
- G. Temporary Sediment and Erosion Control BMPs required for compliance under the Clean Water Act, Ohio Water Pollution Control Act, (OWPCA) (ORC Chapter 6111) and the NPDES permit.

Perform all engineering necessary to ensure long term stability of all side slopes and foundations of all borrow and waste areas. Furnish a certification by a Registered Engineer attesting to the stability of all borrow and waste areas. All damage resulting from the instability of borrow and waste areas, the removal of borrow materials, the placement of waste materials, or the hauling of material to and from these areas is the sole responsibility of the Contractor. Repairs to approved haul roads will be made in accordance with 105.13.

Perform all engineering, including any field investigation, necessary to ensure long term stability of all side slopes and foundations of all borrow and waste areas.

Ensure that all side slopes of all waste areas do not reduce horizontal sight distance as defined by the current version of ODOT's *Location and Design Manual*.

Have the proposed borrow and waste areas reviewed by an environmental consultant that is pre-qualified by the Department for ecological work. Have the environmental consultant certify that the proposed borrow and waste operations will not impact the "Waters of the United States" or an isolated wetland. If consultant certification is not provided, obtain the 404/401 permits necessary to perform the operations as proposed. Have the environmental consultant certify that the work conforms to the requirements of the permit(s). Provide all documentation submitted to obtain the appropriate permit(s) and a copy of the permit(s) to ODOT Office of Environmental Services.

If burning is permitted under the OAC-3745-19 and ORC 1503.18, submit a copy of the Ohio EPA permit and the Ohio DNR permit to the Engineer and copies of all information used to obtain the permit.

Prior to the disposal of waste materials, submit to the LPA an executed copy of the Contract or permission statement from the property owner. The Contract or permission statement must indicate that the waste materials are not the property of the LPA. Further, it must expressly state that the LPA is not a party to the Contract or permission statement and that the Contractor and property owner will hold the LPA harmless from claims that may arise from their contract or permission statement.

Restoration of all borrow or waste areas includes cleanup, shaping, replacement of topsoil, and establishment of vegetative cover by seeding and mulching according to 104.04 and Item 659. Ensure the restored area is well drained unless approval is given by the Engineer to convert a pit area into a pond or lake, in which case confine restoration measures to the disturbed areas above the anticipated normal water level.

For waste sites shown on the plan, the plan will indicate if the clearances have or have not been obtained for the project right-of-way locations. No extension of time or additional compensation will be paid for any delays due to not having the written permit(s) to waste in a floodplain.

The allowed use of Project Right-of-Way and other LPA property for borrow and waste is detailed in 104.03 and 107.11.

Borrow and Waste Area shall adhere to 107.10.

The cost of work described herein is incidental to the Contract, unless included under another item of work.

105.17 Construction and Demolition Debris. OAC-3745-37, OAC-3745-400, and ORC Chapter 3714 regulates the use and disposal of construction and demolition debris. Notify the local Board of Health or the local Ohio EPA office 7 days before placing Clean Hard Fill off the Right-of-Way. Submit copies of this notification to the Engineer.

Legally dispose of debris containing wood, road metal, or plaster at a licensed construction and demolition debris site.

Under the regulations cited above the disposal of brush, trees, stumps, tree trimmings, branches, weeds, leaves, grass, shrubbery, yard trimmings, crop residue, and other plant matter is restricted. If allowed by the Contract Documents, the Contractor may waste brush, trees, stumps, tree trimming, branches, weeds, leaves, grass, shrubbery, yard trimmings, crop

residue, and other plant matter within the Right-of-Way. Otherwise, submit a plan and any required permits to legally dispose of these materials off the Right-of-Way to the Engineer. Provide all documents submitted to obtain this permit to the Engineer.

If the Project contains garbage or solid and hazardous waste, the Contract Documents will detail the removal of these items.

When wasting PCC, mix the PCC with at least 30 percent natural soil to construct an inner core in the waste area. Cover this inner core with 3 feet (1.0 m) of natural soil on the top and 8 feet (2.4 m) on the side slopes. Place and compact the material according to 203.06.D to prevent future settlement and sliding.

Clean Hard Fill consisting of reinforced or non-reinforced concrete, asphalt concrete, brick, block, tile or stone that is free of all steel as per 703.16 shall be managed in one or more of the following ways:

- A. Recycled into a usable construction material.
- B. Disposed in licensed construction and demolition debris facility.
- C. Used in legitimate fill operations on the site of generation according to 105.16.
- D. Used in legitimate fill operations on a site other than the site of generation to bring a site up to grade.

A Beneficial Reuse Certification form needs to be properly executed by the Recipient prior to any material leaving the project.

105.18 Acceptance. The LPA will accept Work according to 109.12 or completed sections of the Project according to 109.11.

105.19 Value Engineering Change Proposals. The LPA will partner with the Contractor by considering a Contractor's submission of a Value Engineering Change Proposal (VECP) which must reduce the overall construction cost on projects not containing Design Build provisions. Savings in construction costs will be shared equally between the Contractor and the LPA. The LPA will partner with the Contractor by considering a VECP for time savings on projects not containing time-based award provisions. The economic value of the savings in time will be shared equally between the Contractor and LPA, however the impacted completion date shall be adjusted to the full amount. Time savings VECPs shall not consist of only acceleration and shall contain a substantial amount of material savings as determined by the LPA.

The Contractor's costs for development, design and implementation of the VECP are not eligible for reimbursement. The VECP must not impair any of the essential functions and characteristics of the project such as service life, reliability, economy of operation, ease of maintenance, safety and necessary standardized features. The VECP designer may not be the designer of record. The submission of the VECP shall conform to Supplement 1113. Acceptance of a VECP is at the discretion of the LPA albeit the ODOT District and/or Central Office shall be involved for review and approval

The LPA will not approve VECPs with any of the following characteristics:

- A. Consist only of non-performing items of work contained in the plans.
- B. Include identified plan errors as part of the cost reduction, at the discretion of the LPA.
- C. Changes to any special architectural or aesthetic treatments or requires changes to NEPA commitments.
- D. Requires concrete beams to be installed with less than 17' vertical clearance over a state highway.
- E. Changes the type or buildup of permanent pavement.
- F. Compromises controlling design criteria or would require a design exception as discussed in Volume I, Section 100, of the Location and Design Manual.
- G. Proposes a time savings to any portion of work on a project which has an Incentive / Disincentive clause associated with Project award.

VECP engineering, design development and implementation costs are not recoverable. Contractor costs or delays due to the LPA's review or rejection of the VECP are not recoverable.

The LPA may reject the Contractor's initial VECP or portions thereof and may proceed with such revisions without any obligations to the Contractor if the LPA already is considering revisions to the contract which are subsequently proposed as a VECP.

Acceptance of a VECP is at the sole discretion of the LPA and may be rejected for any reason.

106 CONTROL OF MATERIAL

106.01 Source of Supply and Quality Requirements. Notify the Engineer of the proposed sources of supply before the delivery of materials. The Engineer may approve materials at the source of supply before delivery. If the proposed sources of supply cannot produce the specified material, then furnish materials from alternate sources without adjustment to the Contract Price or Completion Date.

106.02 Samples, Tests, and Cited Specifications. The Engineer will inspect and determine whether the materials comply with the specified requirements before they are incorporated into the Work. The LPA may sample and test materials or require certifications. Unless specified, the LPA will pay for and test materials according to AASHTO, ASTM, or the methods on file in the office of the Engineer. A qualified representative of the LPA will take test samples according to LPA procedures. Read any reference to other specifications or testing methods to mean the version in effect at the pertinent Project Advertisement date. All materials being used are subject to inspection, test, or rejection at any time before their incorporation into the Work. The LPA will furnish copies of the tests to the Contractor's representative upon request. Furnish the required samples and specified material certifications at no expense to the LPA other than provided in 109.03.

Equip all transports and distributors hauling asphalt material with an approved submerged asphalt material sampling device.

106.03 Small Quantities and Materials for Temporary Application. The Engineer may accept small quantities and materials for temporary application that are not intended for permanent incorporation in the Work. The Engineer may accept these small quantities and materials for temporary application in either of the following cases:

- A. Where similar materials from the same source have recently been approved.
- B. Where the materials, in the judgment of the Engineer, will serve the intended purpose.

106.04 Plant Sampling and Testing Plan. The Engineer may undertake the inspection of materials at the source.

In the event plant sampling and testing is undertaken, the Contractor and its material provider shall meet the following conditions:

- A. Cooperate and assist the Engineer with the inspection of materials. Provide full entry to the Engineer at all times to such parts of the plant as may concern the manufacture or production of the materials being furnished. Agree to all documentation and inspection requirements of the DSR sampling and testing plan.
- B. If required by the Engineer, arrange for the inspector to use an approved building on site. The building should be located near the plant and independent of any building used by the material producer.
- C. Maintain and provide adequate safety measures at the plant at all times.

The LPA reserves the right to retest all materials that have been tested and accepted at the source of supply before their incorporation into the Work. After the approved materials have been delivered to the site, the LPA may reject all materials that when retested do not meet the requirements of the Contract Documents.

106.05 Storage of Materials. Properly store all materials to ensure the preservation of their quality and fitness for the Work. The Engineer may re-inspect stored materials before their incorporation into the Work, even though they were approved before storage. Locate stored materials to facilitate their prompt inspection. The Contractor may use approved portions of the Project Right-of-Way for storage; however, if any additional space is required, the Contractor must provide it at the Contractor's expense. Do not use private property for storage purposes without written permission from the owner or lessee. If requested by the Engineer, furnish copies of the written permission. Restore all storage sites to their original condition at no expense to the LPA. The Contractor and property owner will hold the LPA harmless from claims that may arise from their contract or permission statement. This subsection does not apply to the stripping and storing of topsoil, or to other materials salvaged from the Work.

Areas used to Store Materials shall conform to 107.10.

106.06 Handling Materials. Handle all materials in such manner as to preserve their quality and fitness for the Work. Transport aggregates from the storage site to the project site in vehicles constructed to prevent loss or segregation of materials after loading and measuring. Ensure that there are no inconsistencies in the quantities of materials loaded for delivery and the quantities actually received at the place of operations.

106.07 Unacceptable Materials. Unacceptable materials are all materials not conforming to the requirements of these Specifications at the time they are used. Immediately remove all unacceptable materials from the project site unless otherwise instructed by the PRC and/or CPE. The PRC and/or CPE will determine if unacceptable materials may remain conforming to Supplement 1102. The PRC and/or CPE must approve the use of previously identified unacceptable

materials that have been corrected or repaired. If the Contractor fails to comply immediately with any order of the PRC and/or CPE made under the provisions of this subsection, the PRC and/or CPE will have authority to remove and replace defective materials and to deduct the cost of removal and replacement from any monies due or to become due to the Contractor.

106.08 LPA-Furnished Material. Furnish all materials required to complete the Work, except when otherwise provided in the Proposal.

The LPA will deliver the LPA-furnished materials to the Contractor at the points specified in the Contract Documents.

Include the cost of handling and placing of all LPA-furnished materials in the contract price for the contract item for which they are used.

The LPA will hold the Contractor responsible for all material upon delivery of the materials to the Project site. The LPA will make deductions from any monies due the Contractor to make good any shortages and deficiencies, for any cause whatsoever, and for any damage that may occur after such delivery, and for any demurrage charges.

106.09 Steel and Iron Products Made in the United States. Furnish steel products that are made in the United States according to the applicable provisions of State of Ohio laws, ORC 153.011 and 5525.21. "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

A. State Requirements. All steel products used in the Work for load-bearing structural purposes must be made from steel produced in the United States. State requirements do not apply to iron.

B. Exceptions. The Director may grant specific written permission to use foreign steel products in bridge construction. The Director may grant such exceptions under either of the following conditions:

1. The cost for each contract item used does not exceed 0.1 percent of the total contract cost, or \$2,500, whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project..
2. The director determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

C. Proof of Domestic Origin. Furnish documentation to the Engineer showing the domestic origin of all steel products covered by this section, before they are incorporated into the Work. Products without a traceable domestic origin will be treated as a non-domestic product.

106.10 Qualified Products List. The LPA may use Qualified Product Lists (QPL) for approval of manufactured materials. The ODOT Office of Materials Management (OMM) will maintain the QPL and the standard procedure for the QPL process. Inclusion of a material onto the QPL will be determined by OMM with support from other Department offices. To be kept on the QPL, manufacturers must recertify their material according to the Department's standard procedure by January 1 of each year. When a material requires QPL acceptance, only provide materials listed on the QPL at the time of delivery of the material to the project. Provide the Engineer documentation according to the Department's standard procedure that, at the time of delivery, the material provided is on the QPL.

106.11 Maritime Transportation. On federal-aid projects, ensure that project-specific materials or equipment transported by ocean vessel are in compliance with 46 CFR 381 and the Cargo Preference Act. Transport at least 50% of any equipment or materials on privately owned United States-flag commercial vessels, if available.

106.12 Traffic Authorized Product. The LPA may use Traffic Authorized Product (TAP) List for approval of products used in Intelligent Transportation Systems (ITS) or Traffic Signal Systems. The ODOT Office of Traffic Operations will maintain the TAP and the standard procedure for the TAP process. Inclusion of a product onto the TAP will be determined by Office of Traffic Operations with support from other Department offices. To be kept on the TAP, manufacturers must recertify their product according to the Department's standard procedure by February 28 of each year. When a product requires TAP acceptance, only provide products listed on the TAP at the time of delivery of the product to the project. Provide the Engineer documentation according to the LPA's standard procedure that, at the time of delivery, the material provided is on the TAP.

106.13 Certified Supplier. The LPA may use Certified Suppliers for approval of manufactured materials. The ODOT Office of Materials Management (OMM) will maintain the Certified Supplier list and the procedure for the Certified Supplier process. Inclusion of a material onto the Certified Supplier list will be determined by OMM with support from other Department offices. Administration of the Certified Supplier Program will be in accordance with Supplement 1139.

107 LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

107.01 Laws to be Observed. Stay fully informed of all Federal and State laws, all local laws, ordinances, and regulations, and all orders and decrees of authorities having any jurisdiction or authority that affect those engaged or employed on the Work, or that affect the conduct of the Work. Observe and comply with all such laws, ordinances, regulations, orders, and decrees. The Contractor shall protect and indemnify the State, respective Local and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the Contractor or the Contractor's employees, subcontractors, or agents.

The Contractor, under Title VI of the Civil Rights Act and related statutes, agrees that in the hiring of employees for the performance of Work under this Contract or any subcontract hereunder, neither the Contractor, the subcontractor, nor any person acting on behalf of such Contractor or subcontractor shall, by reasons of race, religion, color, sex, national origin, disability or age, discriminate against any citizen of the United States in the employment of labor or workers, who is qualified and available to perform the Work to which the employment relates.

Neither the Contractor, the subcontractor, nor any person on their behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Contract on account of race, religion, color, sex, national origin, disability or age.

Comply with OAC-4123:1-3, entitled "Specific Safety Requirements of the Industrial Commission of Ohio Relating to Construction," as amended, and with the Federal Occupational Safety and Health Act of 1970 and Code of Federal Regulations, Title 29, Chapter XVII, Part 1926 and as amended.

107.02 Permits, Licenses, and Taxes. Procure all permits and licenses; pay all charges, fees, and taxes; and provide all notices necessary and incidental to the due and lawful prosecution of the Work.

107.03 Patented Devices, Materials, and Processes. Before employing any design, device, material, or process covered by letters of patent or copyright, provide for its use by suitable legal agreement with the patentee or owner. The Contractor and the Surety shall indemnify and save harmless the State, respective Local, any affected third party, or political subdivision from any and all claims for infringement of patented design, device, material, process, or any trademark or copyright, and shall indemnify the State for any costs, expenses, and damages that it may be obliged to pay by reason of any infringement, at any time during the prosecution or after the completion of the Work.

107.04 Restoration of Surfaces Opened by Permit.

The County Engineer may grant to the municipality in which the Work is performed a reservation of rights to construct or reconstruct any utility service in the highway or street or to grant permits for same, at any time. Any individual, firm, or corporation wishing to make an opening in the highway must secure a permit. Allow parties bearing such permits, and only those parties, to make openings in the highway. When ordered by the Engineer, make in an acceptable manner all necessary repairs due to such openings. The necessary repairs will be paid for as Extra Work, or as provided in the Contract Documents, and will be subject to the same conditions as the original Work performed.

107.05 Federal-Aid Provisions. When the United States Government pays for all or any portion of the Project's cost, the Work is subject to the inspection of the appropriate Federal agency.

Such inspections will not make the Federal Government a party to this Contract. The inspections will in no way interfere with the rights of either party to the Contract.

107.06 Sanitary Provisions. Provide and maintain sanitary accommodations in a neat condition for the use of employees and LPA representatives that comply with the requirements of the State and local Boards of Health, or of other authorities having jurisdiction over the Project.

107.07 Public Convenience and Safety. At all times, ensure that the Work interferes as little as possible with the traffic. Provide for the safety and convenience of the general public and the residents along the highway and the protection of persons and property. Do not close any highways or streets unless specifically allowed by the Contract.

Any illegal drugs, drug paraphernalia, mobile drug labs or dumps, weapons or firearms found on the Project Right of Way shall be considered a potential crime scene and shall not be handled or moved. Immediately notify law enforcement and the Project Engineer.

107.08 Bridges Over Navigable Waters. Conduct all Work on navigable waters so that it does not interfere with free navigation of the waterways and that it does not alter the existing navigable depths, except as allowed by permit issued by the U.S. Coast Guard. Work within the flood plain of a navigable stream may require a permit from the U.S. Army Corps of Engineers. If an U.S. Army Corps of Engineers permit is required, provide all documentation submitted to obtain the permit(s) and a copy of the permit(s) to the LPA.

107.09 Use of Explosives. When the use of explosives is necessary for the prosecution of the Work, exercise the utmost care not to endanger life or property, including new Work. The Contractor is responsible for all damage resulting from the use of explosives.

Obtain written permission to perform in-stream blasting from the Chief of the Division of Wildlife, Ohio DNR according to ORC 1533.58. Provide the Engineer with all documentation submitted to obtain this permit and with a copy of the permit.

The Contractor agrees, warrants, and certifies that it will observe State laws and local ordinances and regulations relative to the use and storing of explosives kept on the Project site.

Perform all blasting operations according to Item 208.

107.10 Protection and Restoration of Property. The Contractor is responsible for the preservation of all public and private property impacted by the Contractor's operations.

The Contractor is responsible for all damage or injury to property, during the prosecution of the Work, resulting from any act, omission, neglect, defective work or materials, or misconduct in the manner or method of executing the Work. The Contractor will remain responsible for all damage and injury to property until the Project is accepted under 109.12, except for portions of the Work accepted under 109.11.

If the Contractor causes any direct or indirect damage or injury to public or private property by any act, omission, neglect, or misconduct in the execution or the non-execution of the Work, then it must restore, at its own expense, the property to a condition similar or equal to that existing before the damage or injury.

If mail boxes, road, or street name signs and supports interfere with the Work, then remove and erect them in a temporary location during construction in a manner satisfactory to and as directed by the Engineer. After completion of the Work and before final acceptance of the Project, erect the mailboxes, road, or street name signs and supports in their permanent locations according to the plans unless otherwise directed by the Engineer. Consider the cost of this Work as incidental to the affected items.

Cooperate with the Engineer in protecting and preserving survey monuments that are affected by the Work as required by ORC 5519.05. At the beginning of the Work, verify the position of all survey monuments in the area to be improved, according to 623. If survey monuments not shown in the Contract Documents are unexpectedly encountered, then protect, reference, and preserve them in the same manner as survey monuments that are shown in the Contract Documents.

Do not create staging areas, store materials and equipment, or borrow or waste materials in areas labeled as an environmental resources areas in the Contract Documents. All properties to be utilized by the Contractor outside the project Work Limits must be cleared for all environmental resource impacts prior to the beginning of work. Environmental resources include but may not be limited to:

1. Cultural Resources
 - a. Buildings, structures, objects, and sites eligible for or listed on the National Register of Historic Places
 - b. Historic or prehistoric human remains, cemeteries, and/or burial sites (pursuant with ORC 2909.05 and 2927.11)
2. Ecological Resources
 - a. Wetlands
 - b. Streams
 - c. Wooded areas with trees to be removed in excess of 8 inches diameter at breast height
3. Public Lands
 - a. Lands meeting the criteria of 49 U.S.C. 303, 23 CFR 771.135: 4(f).
 - b. Lands meeting the criteria of 16 U.S.C. 4601-4, 36 CFR 59.1: 6(f).
4. FEMA Mapped 100 year Floodplains
5. Hazardous Waste Areas

Except for locations utilized specifically for:

1. Parking of equipment between workdays for maintenance type projects:

2. Reuse of Clean Hard Fill as described in CA-EW-20 (ODOT Beneficial Reuse Form). Prior to transferring Clean Hard Fill from the project, fully execute form CA-EW-20 and provide appropriate documentation to the Engineer as described for each reuse option.

All areas proposed to be utilized by the Contractor outside the project construction limits and not described above shall be reviewed by environmental Contractor(s) that are prequalified by the Department for each environmental resource. Exception (1.) noted above only applies to projects with "maintenance" in the project description. Have the consultant(s) certify that the proposed site to be utilized for the Contractor will not impact:

1. Cultural Resources
2. Ecological Resources
3. Public Lands
4. FEMA Mapped 100 year Floodplains
5. Hazardous Waste Areas

Provide all documentation and the consultant certification to the ODOT Office of Environmental Services with a copy to the Engineer.

Should the areas proposed for use by the Contractor outside the project right of way limits contain environmental resources the Contractor is responsible to the LPA for all environmental clearances and permits prior to the beginning of work.

107.11 Contractor's Use of the Project Right-of-Way or Other LPA-Owned Property.

A. Disposal of Waste Material and Construction Debris and Excavation of Borrow on the Project Right-of-Way or on Other LPA-Owned Property. Dispose of waste material according to 105.16 and dispose of construction debris according to 105.17. In addition to the rights granted in 104.03, the Contractor's use of the Project Right-of-Way or other LPA-owned property for the disposal of waste material and construction debris and excavation of borrow material is restricted as follows:

1. If the Contract Documents identify locations for the disposal of waste material and construction debris or excavation of borrow material within the Project Right-of-Way or on other LPA-owned property, then only perform these operations in these designated locations.
2. If the Contract Documents do not identify locations for the disposal of waste material and construction debris or excavation of borrow material within the Project Right-of-Way or on other LPA-owned property, then do not Bid assuming that the LPA will make such locations available.

If the Contractor's request to use locations within the Project Right-of-Way or on other LPA-owned property is approved by the Engineer, then the LPA may allow the Contractor to dispose of waste material and construction debris or excavate borrow material for a fee of \$0.50 per cubic yard.

B. Contractor's Use of Portable Plants Within the Project Right-of-Way or on Other LPA-Owned Property. The Contractor's use of portable plants within the Project Right-of-Way or on other LPA-owned property is limited as follows:

1. If the Contract Documents identify locations within the Project Right-of-Way or on other LPA-owned property to place a portable plant, then only place a portable plant in these designated locations subject to the requirements of 107.11.C.
2. If the Contract Documents do not identify locations within the Project Right-of-Way or on other LPA-owned property to place a portable plant, then do not bid assuming that the LPA will make such locations available.

However, the LPA will consider a Value Engineering Change Proposal (VECP) for the placement of a portable plant within the Project Right-of-Way or on other LPA-owned property and, if accepted, may allow the use of a particular site on its property subject to the requirements of 107.11.C.

C. Placement of a Portable Plant within the Project Right-of-Way or on Other LPA-Owned Property. To place a portable plant within the Project Right-of-Way or on other LPA-owned property, comply with the following requirements:

1. Local noise ordinances.
2. Obtain any necessary EPA permits for the operation of the plant. Provide the LPA with a copy of the information submitted to obtain the permit and a copy of the permit.
3. Provide the Engineer written certification that the plant will supply material only for the Project for which it was approved. Do not use the plant to supply any other project or to sell materials commercially.

4. Submit a traffic control plan to the Engineer for approval that details the anticipated truck movements and provides acceptable protection, warning, and guidance to motorists, pedestrians, and the workers.

D. Equipment Storage and Staging. The Contractor may use, fee-free, any portion of the Project within the Project Right-of-Way for staging, equipment storage, or an office site with the approval of the Engineer, provided such usages do not interfere with the Work and are not prohibited by the Contract Documents. Do not bid in anticipation of using any properties within the Project Right-of-Way or LPA-owned property outside the Project Right-of-Way for equipment storage or staging.

E. Equipment Removal and Site Restoration. Remove all Contractor equipment and completely restore all utilized sites used as required by 104.04 before Final Acceptance as provided in 109.12.

107.12 Responsibility for Damage Claims and Liability Insurance. The Contractor shall indemnify and save harmless the State and all of its representatives, municipalities, counties, public utilities, any affected railroad or railway company, and any fee owner from whom a temporary Right-of-Way was acquired for the Project from all suits, actions, claims, damages, or costs of any character brought on account of any injuries or damages sustained by any person or property on account of any negligent act or omission by the Contractor or its subcontractors or agents in the prosecution or safeguarding of the Work.

The Contractor shall procure and maintain insurance for liability for damages imposed by law and assumed under this Contract, of the kinds and in the amounts hereinafter provided from insurance companies authorized to do business in the State by the Ohio Department of Insurance. The cost of insurance is incidental to all contract items. Before the execution of the Contract by the PRC, furnish to the LPA a certificate or certificates of insurance in the form satisfactory to the LPA demonstrating compliance with this subsection. Provide an insurance certificate or certificates that show that the Contractor's liability and auto policies coverage are not reduced, restricted, or canceled until 30 days written notice has been given to the LPA by the insurer.

Mail all certificates and notices to: The Defiance County Engineer's Office, 510 Court St., Ste 201, Defiance, OH 43512.

Upon request, the Contractor shall furnish the LPA with a certified copy of each policy, including the provisions establishing premiums.

The types and minimum limits of insurance are as follows:

A. Workers' Compensation Insurance. Comply with all provisions of the laws and rules of the Ohio Bureau of Workers' Compensation covering all operations under Contract with the LPA whether performed by it or its subcontractors. In addition, if a portion of the Work is performed from a barge or ship or requires unloading material from a barge or ship on a navigable waterway of the United States, it is the responsibility of the Contractor to arrange coverage for that portion of the Work under the Longshore and Harborworkers' Compensation Act [33 USC Section 901 *et seq.*] and the Jones Act [5 USC Section 751 *et seq.*] and provide proof of coverage to the LPA.

B. Commercial General Liability Insurance. The minimum limits for liability insurance are as follows:

General Aggregate Limit	\$2,000,000
Products - Completed Operations	
Aggregate Limit	\$2,000,000
Personal and Advertising Injury Limit	\$1,000,000
Each Occurrence Limit	\$1,000,000

Obtain the above minimum coverages through primary insurance or any combination of primary and umbrella insurance. In addition, the LPA will require the General Aggregate Limit on a per project basis.

Ensure that the Commercial General Liability Insurance policy names the State of Ohio, Local Public Agency, its officers, agents, and employees as additional insureds with all rights to due notices in the manner set out above. Obtain Explosion, Collapse, and Underground (XCU) coverage at the same limits as the commercial general liability insurance policy. In addition, if blasting is to be performed, obtain XCU coverage providing a minimum Aggregate Limit of \$5,000,000 and Each Occurrence Limit of \$1,000,000. Submit proof of insurance, endorsements, and attachments to the Engineer prior to starting the Work.

C. Comprehensive Automobile Liability Insurance. The Comprehensive Automobile Liability policy shall cover owned, non-owned, and hired vehicles with minimum limits as follows:

Bodily Injury and Property Damage Liability Limit	
Each Occurrence	\$1,000,000

Insurance coverage in the minimum amounts set forth neither relieves the Contractor from liability in excess of such coverage, nor precludes the LPA from taking such other actions as are available to it under any other provisions of this Contract or otherwise in law.

Clearly set forth all exclusions and deductible clauses in all proof of insurance submitted to the LPA. The Contractor is responsible for the deductible limit of the policy and all exclusions consistent with the risks it assumes under this Contract and as imposed by law.

If the Contractor provides evidence of insurance in the form of certificates of insurance, valid for a period of time less than the period during which the Contractor is required by terms of this Contract, then the LPA will accept the certificates, but the Contractor is obligated to renew its insurance policies as necessary. Provide new certificates of insurance from time to time, so that the LPA is continuously in possession of evidence that the Contractor's insurance is according to the foregoing provisions.

If the Contractor fails or refuses to renew its insurance policies or the policies are canceled or terminated, or if aggregate limits have been impaired by claims so that the amount available is under the minimum aggregate required, or modified so that the insurance does not meet the requirements of 107.12.C, the LPA may refuse to make payment of any further monies due under this Contract or refuse to make payment of monies due or coming due under other contracts between the Contractor and the LPA. The LPA in its sole discretion may use monies retained pursuant to this subsection to renew or increase the Contractor's insurance as necessary for the periods and amounts referred to above. Alternatively, should the Contractor fail to comply with these requirements, the LPA may default the Contractor and call upon the Contractor's Surety to remedy any deficiencies. During any period when the required insurance is not in effect, the Engineer may suspend performance of the Contract. If the Contract is so suspended, the Contractor is not entitled to additional compensation or an extension of time on account thereof.

Nothing in the Contract Documents and insurance requirements is intended to create in the public or any member thereof a third party beneficiary hereunder, nor is any term and condition or other provision of the Contract intended to establish a standard of care owed to the public or any member thereof.

107.13 Reporting, Investigating, and Resolving Motorist Damage Claims.

The Contractor and the County Engineer are required to report, investigate, and resolve motorist damage claims according to 107.10 and 107.

107.14 Opening Sections of Project to Traffic. The Engineer may order the Contractor to open a section of the Work to the safe use of traffic at any time. The LPA will make an adjustment according 108.06 and 109.05 to compensate the Contractor for the added costs and delay, if any, resulting from such an opening.

107.15 Contractor's Responsibility for Work. Until the Final Inspector accepts the Work during the Final Inspection according to 109.12.A, the Contractor is responsible for the Project and will take every precaution against injury or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the Work. Rebuild, repair, restore, and make good all injuries or damages to any portion of the Work occasioned by any of the above causes before final acceptance. Bear the expense of the repairs except when damage to the Work was due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor. Unforeseeable causes include but are not restricted to; (a) earthquake, floods, tornados, high winds, lightning or other catastrophes proclaimed a disaster or emergency, (b) slides, (c) civil disturbances, or (d) governmental acts.

In the event that the Engineer determines that damage to completed permanent items of Work results from traffic using a substantially completed section of Roadway, the LPA may compensate the Contractor for repair of the damage as authorized by Change Order. Additionally, if traffic permanently damages beyond use and of the following temporary maintenance of traffic items, the LPA may compensate the Contractor for replacement of the item as authorized by Change Order:

- Arrow board,
- Work zone signal, pole, or controller,
- Lighting unit or pole,
- Changeable message sign,
- Work Zone Impact Attenuator,
- Truck Mounted Impact Attenuator,
- Digital Speed Limit Sign Assembly.

To receive compensation for the damage to permanent items of Work or temporary maintenance of traffic items named above, the Contractor must first meet the following requirements.

- A. Notify the Engineer of each occurrence of damage in writing within 10 Calendar Days.
- B. Contact the local law enforcement agency to determine if the accident was investigated and a report filed. If an accident report was filed, obtain the report and notify the motorist, and copy their insurance company, via certified mail informing both that the motorist is responsible for the cost of damage repairs. If the motorist does not respond within 30 days, make a second attempt to contact the motorist and copy the insurance company via certified mail.
- C. If no response is received from the motorist or insurance company within 30 days of the motorist receipt of the second notice, send a letter to the Engineer within eighteen months of the event and include documentation of good faith effort to seek recovery from responsible parties.
- D. The LPA will make an adjustment according to 108.06 and 109.05 to compensate the Contractor for the added costs and delays, if any, resulting from the repair or replacement of damaged Work.

If there is no accident report on file and no means of identifying the responsible motorist, the Contractor may likewise be compensated to repair the damaged Work.

In case of suspension of Work by the Contractor or under the provisions of 105.01, the Contractor is responsible for the Project and shall take necessary precautions to prevent damage to the Project; provide for normal drainage; and erect any necessary temporary structures, signs, or other facilities at its expense. During such period of suspension of Work, properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedlings, and soddings furnished under the Contract, and take adequate precautions to protect new tree growth and other important vegetative growth against injury.

The Engineer may direct the Contractor to remove graffiti any time during the Work. The LPA will make an adjustment according to 108.06 and 109.05 to compensate the Contractor for the added costs and delays, if any, resulting from all ordered graffiti removal.

107.16 Contractor's Responsibility for Utility Property and Services. At points where the Contractor's operations are adjacent to properties of railway, cable, telephone, and power companies, or are adjacent to other property, and any damage to their property may result in considerable expense, loss, or inconvenience, do not commence with the operation until all arrangements necessary for the protection of the property have been made.

Cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement operations to ensure these operations progress in a reasonable manner, that duplication of rearrangement Work may be reduced to a minimum, and that services rendered by those parties will not be unnecessarily interrupted.

In the event interruption to underground or overhead utility services results from an accidental breakage or from being exposed or unsupported, immediately alert the occupants of nearby premises as to any emergency that the accidental breakage may create at or near such premises. Then notify the Engineer and the owner or operator of the utility facility of the disruption and cooperate with the said utility owner or operator in the restoration of service. If water service is interrupted, perform the repair work continuously until the service is restored unless the repair work is performed by the local governmental authority. Do not begin Work around fire hydrants until the local fire authority approves provisions for continued service.

107.17 Furnishing Right-of-Way. The LPA is responsible for securing all necessary Right-of-Way in advance of construction. The Bid Documents will indicate any exceptions. The LPA will notify all prospective Bidders in writing before the date scheduled for receipt of Bids regarding the specific dates certain parcels will be made available to the Contractor.

107.18 No Waiver of Legal Rights. The following LPA actions do not waive the LPA's rights or powers under the Contract, or any right to damages herein provided:

- A. Inspection by the Engineer or by any of Engineer's duly authorized representatives.
- B. Any order, measurements, or certificate by the PRC and/or CPE, or LPA representatives.
- C. Any order by the PRC and/or CPE or LPA representatives for the payments of money or the withholding of money.
- D. Acceptance of any Work.
- E. Any extension of time.
- F. Any possession taken by the LPA or its duly authorized representatives.

The LPA will not consider any waiver of a breach of this Contract to be a waiver of any other subsequent breach.

107.19 Environmental Protection. Comply with all Federal, State, and local laws and regulations controlling pollution of the environment. Avoid polluting streams, lakes, ponds, and reservoirs with fuels, oils, bitumens, chemicals, sediments, or other harmful materials, and avoid polluting the atmosphere with particulate and gaseous matter.

By execution of this contract, the Contractor, will be deemed to have stipulated as follows:

- A. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
- B. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
- C. That the firm shall promptly notify the LPA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
- D. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

Fording of streams is prohibited. Causeways for stream and river crossings or for Work below a bridge are permitted provided:

- A. The causeway complies with the requirements of the 404 Permit the LPA obtained for the Project.
- B. The Contractor obtains a 404 Permit from the U.S. Army Corps of Engineers if the LPA has not obtained such a permit. Obtain the 404 Permit prior to beginning construction of the causeway. The LPA does not guarantee that the Contractor will be able to obtain a 404 Permit.

Comply with all current provisions of the Ohio Water Pollution Control Act (OWPCA), (ORC Chapter 6111). The LPA will obtain a storm water permit under the OWPCA provisions when the plan work acreage requires a permit. Apply for a permit to cover operations outside the Project limits shown on the plans as required by the OWPCA provisions. When the LPA has not applied for a permit on the Project and a permit is required under the provisions of the OWPCA because of the total area of the Contractor's work, apply for, obtain, and comply with the required permit for both the Work within Project limits and the Contractor's work.

The LPA has obtained the required permits from the U.S. Army Corps of Engineers and Ohio EPA for Work in the "Waters of the United States" and isolated wetlands under ORC Chapter 6111. Comply with the requirements of these permits.

When equipment is working next to a stream, lake, pond, or reservoir, appropriate spill response equipment is required. Do not stockpile fine material next to a stream, lake, pond, or reservoir.

Take precautions to avoid demolition debris and discharges associated with the excavation and hauling of material from entering the stream. Remove any material that does fall into the stream as soon as possible.

When excavating in or adjacent to streams, separate such areas from the main stream by a dike or barrier to keep sediment from entering the stream. Take care during the construction and removal of such barriers to minimize sediment entering the stream.

Contain, collect, characterize and legally dispose of all liquid waste and sludge generated during the work. Do not mix wastes with storm water. Do not discharge any liquid waste without the appropriate regulatory permits. Manage liquid waste and sludge in accordance with ORC Chapter 6111 and all other laws, regulations, permits and local ordinances relating to this waste. Liquid waste management is incidental to the Work unless otherwise specified in the contract.

Control the fugitive dust generated by the Work according to OAC-3745-17-07(B), OAC-3745-17-08, OAC-3745-15-07, and OAC-3745-17-03 and local ordinances and regulations. Prior to the initiation of abrasive coating removal, pavement cutting or any other construction operation that generates dust, demonstrate to the Engineer that construction related dust will be controlled with appropriate Reasonable Available Control Measures (RACM) as described in OEPA Engineering Guide #57 (<http://epa.ohio.gov/dapc/engineer/eguides.aspx>).

In addition, use dust control measures when fugitive dust creates unsafe conditions as determined by the Engineer. Perform this work without additional compensation except for Item 616.

Perform open burning according to 105.16.

107.20 Civil Rights. Comply with Federal, State, and local laws, rules, and regulations that prohibit unlawful employment practices including that of discrimination because of race, religion, color, sex, national origin, disability or age and that define actions required for Affirmative Action and Disadvantaged Business Enterprise (DBE) programs.

107.21 Prompt Payment. In accordance with ORC 4113.61, make payment to each subcontractor and supplier within 10 Calendar Days after receipt of payment from either the Department or LPA for Work performed or materials delivered or incorporated into the Project, provided that the pay estimate prepared by the Engineer includes Work performed or materials delivered or incorporated into the public improvement by the subcontractor or supplier. Contractors are prohibited from holding retainage from subcontractors that can provide a bond. For unbonded subcontractors and suppliers, promptly release any retainage held, as set forth in any subcontractor or supplier agreement, 30 days after the work is satisfactory completed. For the purposes of this section, satisfactory completed will be interpreted as when the subcontractor has completed all physical work and submitted any necessary documentation required by the specifications and the LPA. No subcontract provision shall permit the Contractor to delay subcontractor's retainage payments until the Project's final payment.

Also require that this contractual obligation be placed in all subcontractor and supplier contracts that it enters into and further require that all subcontractor and suppliers place the same payment obligation in each of their lower tier contracts. If the Contractor, subcontractors, or supplier subject to this provision fail to comply with the 10 Calendar Day requirement, the offending party shall pay, in addition to the payment due, interest in the amount of 18 percent per annum of the payment due, beginning on the eleventh Calendar Day following the receipt of payment from either the Department or LPA and ending on the date of full payment of the payment due plus interest.

Repeated failures to pay subcontractors and suppliers timely pursuant to this subsection will result in a finding by the LPA that the Contractor is in breach of Contract and subject to all legal consequences that such a finding entails. Further, repeated failures to pay timely pursuant to this subsection will result in a lower evaluation score for the Contractor and those subcontractors who are subject to evaluation by the Department.

107.22 Unmanned Aircraft Systems. If the project requires or anticipates the use of Unmanned Aircraft Systems within LPA Right of Way, the Contractor will follow proper risk assessment and federal regulations in accordance with Supplement 1132.

108 PROSECUTION AND PROGRESS

108.01 Subletting of the Contract. Perform Work amounting to not less than 50 percent of the Contract Price with its own organization, unless otherwise approved by the PRC or CPE. The phrase "its own organization" includes only workers employed and paid directly, inclusive of employees who are employed by a lease agreement acceptable to the PRC or CPE, and equipment owned or rented with or without operators by the Contractor. The phrase does not include employees or equipment of a subcontractor, assignee, or agent of the Contractor. Obtain the PRC or CPE's written consent to subcontract, sublet, sell, transfer, assign, or otherwise relinquish rights, title, or interest in the Work. Provide the PRC or CPE with a copy of all Disadvantaged Business Enterprise subcontracts.

The Contractor's percentage of the total Contract Price includes the cost of materials and manufactured products purchased by the Contractor, but not the cost of materials and manufactured products purchased by subcontractors.

The PRC or CPE will calculate the Contractor's percentage based on the quantities shown in the Proposal and the unit prices of the contract items to be performed by the Contractor's organization. If the Contractor performs only a portion of a contract item, then the PRC or CPE will determine the proportional value administratively on the same basis. The PRC or CPE will follow this procedure even when the part not subcontracted consists only of the procurement of materials. However, if a firm both sells the materials to the Contractor and performs the Work of incorporating the materials into the Project, then the PRC or CPE will consider these two phases in combination and as a single subcontract. If an affiliate of the firm either sells the materials or performs the Work, the PRC or CPE may refuse approval. An affiliate is one who has some common ownership or other close relation to said firm.

Use actual subcontract prices for calculating compliance with any Disadvantaged Business Enterprise (DBE) percentage subcontracting obligations. If only a part of a contract item is sublet, then determine its proportional value administratively on the same basis. The PRC or CPE will follow this procedure even when the part not sublet consists only of procuring materials. However, if a firm both sells the materials to the Contractor and performs the work of incorporating the materials into the Project, then the LPA will consider these two phases in combination and as a single subcontract. If an affiliate of the firm either sells the materials or performs the Work, the LPA may refuse approval.

108.02 Partnering. It is the intent of the LPA to partner every project. The purpose of Partnering is to develop a proactive effort and spirit of trust, respect, and cooperation among all stakeholders in a project. Partnering does not affect the terms and conditions of the Contract. The Partnering process in this section is Self-facilitated Partnering performed by the Project personnel. Costs associated with the Self-facilitated Partnering process are incidental to the Contract.

A. Preconstruction Meeting. Meet with the Engineer for a Preconstruction Meeting before beginning the Work. At or before the meeting, submit the initial progress schedule to the PRC. Prepare the schedule according to 108.03.

Furnish a list of proposed subcontractors and material suppliers at or before the Preconstruction Meeting. If the Contractor fails to provide the required submissions at or before the Preconstruction Meeting, the Engineer may order the meeting suspended until they are furnished. Do not begin the Work until the meeting is reconvened and concluded or the Engineer gives specific written permission to proceed.

B. Initial Partnering Session. In conjunction with the PRC and/or CPE, determine whether the Initial Partnering Session will be conducted as part of the Preconstruction Meeting or as a separate meeting. Partnering shall have its own agenda with specific time set aside to develop the necessary partnering protocols. Develop the Partnering agenda with the PRC and/or CPE.

Identify and invite all stakeholders necessary to make the Project successful including utility companies, other transportation entities (i.e., railroads), community leaders, all Project participants including subcontractors.

During the Initial Partnering Session, consider developing Partnering teams consisting of LPA and Contractor senior personnel and Project personnel. Consider the following items for discussion:

1. Identifying and developing a consensus on project goals consistent with the contractual obligations, including specific goals concerning safety, quality, schedule, and budget.
2. Deciding how the teams will measure progress on Project goals.
3. Identifying any potential risks to the Project's success, mitigation strategies and an implementation plan for the appropriate strategies.
4. Defining key issues, project concerns, joint expectations, roles of key partnership leaders, lines of decision making authority, and share relevant information to help determine the scope of the Partnering efforts.
5. Identifying any opportunities for project enhancement, enhancement strategies and a specific action plan for implementing strategies.
6. Developing a communication protocol to enhance communication on the Project
7. Developing an issue identification and resolution process that identifies and attempts to resolve issues at the level closest to the work. The issue identification and resolution process will develop all the necessary steps for issue elevation including Notice and Mitigation defined in 108.02.F and the Dispute Resolution and Administrative Claims Process defined in 108.02.G.

8. On-line surveys of Project participants may be used to evaluate Project goals and help identify issues either before or immediately after the Initial Partnering Session. The on-line survey is located on the Division of Construction Management's Partnering website:

www.dot.state.oh.us/Divisions/ConstructionMgt/Pages/Partnering.aspx

C. Progress Meetings. Hold monthly Progress Meetings unless the frequency is otherwise determined at the Preconstruction Meeting. Coordinate with the Engineer to determine agenda topics prior to each meeting. The purpose of Progress Meetings is to keep open communication between the Contractor and the Engineer. The senior personnel team is encouraged to participate in all Progress Meetings. Include Partnering as an agenda item at the Progress Meetings.

D. Post-milestone Meeting. In conjunction with the PRC and/or CPE, determine whether the Post-milestone Meeting will be conducted as part of the Progress Meeting or as a separate meeting for multi-year, multi-phase, or projects with critical items of work or milestone dates. Consider discussing and updating items from the Initial Partnering Session in addition to items specific to the Project. All stakeholders should be invited to attend.

E. Partnering Monitoring.

Monitor the progress of the Partnering relationship based on the goals decided during the Initial Partnering Session. On-line surveys of Project participants may be used to monitor progress on Project goals and help identify issues as they arise. The on-line survey is located on the Division of Construction Management's Partnering website: www.dot.state.oh.us/Divisions/ConstructionMgt/Pages/Partnering.aspx

F. Mitigation and Notice. Mitigation of any issue, whether caused by the LPA, Contractor, third-party or an intervening event, is a shared contract and legal requirement. Mitigation efforts include, but are not limited to, re-sequencing work activities, acceleration, and substitution of materials. The Contractor and Engineer must explore and discuss potential mitigation efforts in a timely manner.

1. Contractor Initial Oral Notification. Provide immediate oral notification to the PRC and/or CPE upon discovering a circumstance that may require a revision to the Contract Documents or may result in a dispute. Upon notification, the PRC and/or CPE will attempt to resolve the identified issue as quickly as possible.

2. Contractor Written Early Notice. If the PRC and/or CPE has not resolved the identified issue within two (2) working days after receipt of oral notification, provide written notice to the PRC and/or CPE of any circumstance that may require a revision to the Contract Documents or may result in a dispute. This early notice must be given by the end of the second working day following the occurrence of the circumstance.

The PRC and/or CPE and Contractor shall maintain records of labor, equipment, and materials used on the disputed work or made necessary by the circumstance. Such records will begin when early notice is received by the PRC and/or CPE. Tracking such information is not an acknowledgement that the LPA accepts responsibility for payment for this disputed work.

If an issue is not resolved through the initial mitigation efforts, either abandon or escalate to the Dispute and Administrative Claims Process defined in 108.02.G.

G. Dispute Resolution and Administrative Claims Process. Whenever an issue is elevated to a dispute, the parties shall exhaust the LPA's Dispute Resolution and Administrative Claim process set forth below as a condition precedent to filing an action in the Ohio Court of Claims. The following procedures do not otherwise compromise the Contractor's right to seek relief in any Ohio Court with legal jurisdiction.

All parties to the dispute must adhere to the Dispute Resolution and Administrative Claim process. Do not contact LPA personnel who are to be involved in a Step 2 or Step 3 review until a decision has been issued by the previous tier. LPA personnel involved in Step 2 or Step 3 reviews will not consider a dispute until the previous tier has properly reviewed the dispute and issued a decision.

Failure to meet any of the timeframes outlined below or to request an extension will terminate further review of the dispute and serve as a waiver of the Contractor's right to file a claim.

Disputes and claims by subcontractors and suppliers may be pursued by the Contractor on behalf of subcontractors or suppliers. Disputes and claims by subcontractors and suppliers against the LPA but not supported by the Contractor will not be reviewed by the LPA. Disputes and claims of subcontractors and suppliers against the Contractor will not be reviewed by the LPA.

Continue with all Work during the Dispute Resolution and Administrative Claims process, including that which is in dispute. The LPA will continue to pay for Work.

The LPA will not make the adjustments allowed by 104.02.B, 104.02.C, and 104.02.D if the Contractor did not give notice as specified in 108.02.F.1 and 108.02.F.2. This provision does not apply to adjustments provided in Table 104.02-2.

LPA SHALL SPECIFY

Dispute Resolution Templates can be found on the following ODOT Office of Local Programs Website.

<http://www.dot.state.oh.us/Divisions/Planning/LocalPrograms/Pages/LocalLetProcesses.aspx>

H. Post Construction Meeting. The LPA will conduct a Post Construction Meeting with the Contractor prior to the project finalization. The PRC and/or CPE will invite the design agency and any other stakeholders deem necessary including utility companies, other transportation entities (i.e. railroads), community leaders, all Project participants including subcontractors performing critical work to attend this meeting.

Consider the following items for discussion:

1. Project Safety.
2. How were the goals evaluated or measured?
3. How were foremen/ workers involved in the Partnering process?
4. How were the subcontractors involved in the Partnering process?

5. How were relationships with key stakeholders managed?
6. Teambuilding activities or unique motivational activities.

I. Partnering Close-Out Survey.

SPECIFICATION IS NOT INCLUDED IN THIS CONTRACT

108.03 Prosecution and Progress. Start the Work according to 108.02. Notify the Engineer at least 24 hours before starting the Work. If the prosecution of the Work is suspended, notify the Engineer a minimum of 24 hours in advance of resuming operations.

Pursue the Work diligently and continuously as to complete the Project by the Completion Date.

A. Progress Schedule.

1. General. Furnish a bar chart progress schedule to the PRC and/or CPE for review at or before the Preconstruction Meeting. The Engineer will review the schedule and within 14 calendar days of receipt, will either accept the schedule or provide the Contractor with comments. Acceptance of the schedule does not revise the Contract Documents. Provide clarification or any needed additional information within 10 days of a written request by the Engineer. The LPA will withhold Estimates until the Engineer accepts the schedule. The Engineer will not measure or pay for the preparation of the schedule and schedule updates directly, but the cost of preparing and updating the schedule is incidental to all Contract Items.

a. Include the following Administrative Identifier Information:

- (1) Project Number
- (2) County
- (3) Route Number
- (4) PID Number
- (5) Completion Date
- (6) Contractor's Name
- (7) Contractor's Dated Signature
- (8) LPA's Dated Acceptance Signature

Provide a working day schedule that shows the various activities of Work in sufficient detail to demonstrate a reasonable and workable plan to complete the Project by the Completion Date. Show the order and the sequence for accomplishing the Work. Describe all activities in sufficient detail so that the Engineer can readily identify the Work and measure the progress of each activity. The bar chart schedule must reflect the scope of work, required phasing, maintenance of traffic requirements, interim completion dates, the Completion Date, and other project milestones established in the Contract Documents. Include activities for submittals, working and shop drawing preparation, submittal review time for the LPA, material procurement and fabrication, and the delivery of materials, plant, and equipment, and other similar activities. The schedule must be detailed on letter or legal sized paper.

b. Activity requirements are discussed in further detail as follows:

(1) Activity Description. Assign each activity an unambiguous descriptive word or phrase. For example, use "Excavate Area A," not "Start Excavation."

(2) Activity Original Duration. Indicate a planned duration in calendar days for each activity. Do not exceed a duration of 20 working days for any activity unless approved by the Engineer. Do not represent the maintenance of traffic, erosion control, and other similar items as single activities extending to the Completion Date. Break these Contract Items into component activities in order to meet the duration requirements of this paragraph.

2. Early Completion Schedule. An Early Completion Schedule is defined as a baseline schedule or update schedule which anticipates completion of all work prior to the Completion Date established by the contract documents and the Contractor submits as an Early Completion Schedule. In the event that an Early Completion Schedule is accepted, the Engineer will initiate a change order amending the Completion Date to the finish date shown on the accepted Early Completion Schedule. The amended Completion Date will be effective upon execution of that change order and all contract provisions concerning the Completion Date such as incentives, disincentives, excusable delays, compensable delays, and liquidated damages will be measured against the amended Completion Date. The Contractor may elect not to execute the change order amending the Completion Date; however, in so doing, the Contractor waives its rights to delay damages in meeting the projected early Completion Date.

3. Updated Progress Schedule. Submit an updated progress schedule when ordered by the Engineer. The Engineer may request an updated progress schedule when progress on the work has fallen more than 14 calendar days behind the latest

accepted progress schedule. Information in the updated schedule must include a "% work completed" value for each activity.

4. **Recovery Schedule.** If the progress schedule projects a finish date for the Project more than 14 calendar days later than the Completion Date, submit a revised schedule showing a plan to finish by the Completion Date. The LPA will withhold Estimates until the Engineer accepts the revised schedule. The Engineer will use the schedule to evaluate time extensions and associated costs requested by the Contractor.

108.04 Limitation of Operations. Limit operations to prevent unnecessary inconvenience to the traveling public. If the Engineer concludes that the extent of the Contractor's Work unnecessarily inconveniences the public or concludes limiting operations are necessary to protect the existing or new construction from damage, the Engineer will require the Contractor to finish portions of Work in progress before starting new Work.

108.05 Character of Workers Methods and Equipment. Provide personnel with sufficient skills and experience to perform assigned tasks.

Ensure that no debarred individuals listed on the Federal website: www.epls.gov or State debarment list at the website: www.dot.state.oh.us/divisions/contractadmin/ act in any ownership, leadership, managerial, or other similar position that could influence the operations of an entity doing business with the LPA.

If the Engineer gives written notification that specific Contractor or subcontractor personnel are improperly performing the Work, intemperate, disorderly, or creating a hostile work environment, remove the identified personnel from the Project. Do not allow removed personnel to return to the Project without the Engineer's approval.

The Engineer may suspend the Work by written notice under this subsection for the following reasons:

A. The Contractor does not furnish sufficient skilled and experienced personnel to complete the Project by the Completion Date.

B. The Contractor does not remove personnel from the Project as directed in writing by the Engineer.

Use equipment of sufficient size and mechanical condition to complete the Project by the Completion Date. Ensure that the equipment does not harm the roadway, adjacent property, other highways, workers, or the public.

If the Contract Documents do not prescribe the methods and equipment required to accomplish the Work, determine the methods or equipment necessary to complete the Work according to the Contract.

If the Contract Documents specify methods and equipment to perform the Work, use such methods and equipment, unless others are authorized by the Engineer. Obtain the Engineer's written approval before substituting alternate methods or equipment. To obtain the Engineer's approval, submit a written description of the alternate methods and equipment proposed and an explanation of the reasons for making the change. The Engineer's approval of the substitute methods and equipment does not relieve the Contractor of the obligation to produce Work according to 105.03. If after trial use of the substituted methods or equipment, the Engineer determines that the Work does not conform to the Contract Documents, then complete the remaining Work using the specified methods and equipment. Remove all deficient Work and replace it according to the Contract Documents, or take such other corrective action as directed by the Engineer. The Engineer's authorization to substitute alternate methods and equipment will not change the basis of payment for the construction items involved or the Contract Time.

108.06 Determining a Time Extension to the Completion Date and Payment for Excusable Delays.

A. **General.** The LPA will only extend the Completion Date if an excusable delay, as specified in 108.06.B or 108.06.D, delays Work on the critical path shown on the accepted progress schedule and impacts the Completion Date. The critical path is defined as; the longest path of activities in the project that determines the project schedule completion date. The activities that make-up the critical path of activities are the "Critical Activities." Any extension of the Completion Date will be executed by a change order.

Mitigation of any delay, whether caused by the LPA, Contractor, third-party or an intervening event, is a shared contract and legal requirement. Mitigation efforts include, but are not limited to, re-sequencing work activities, acceleration, and continuation of work through an otherwise planned shutdown period. The Contractor and Engineer must explore and discuss potential mitigation efforts in a timely manner.

The LPA will not evaluate a request for extension of the Completion Date unless the Contractor notifies the Engineer as specified in 108.02.F. Notification shall be in writing to the Engineer within 30 days following the termination of the event giving rise to the request and shall be accompanied by supporting analysis and documentation.

The Engineer will evaluate the Contractor's analysis and determine the time extension due, if any. The Engineer will measure all time extensions in Calendar Days. For delays measured in Workdays, the Engineer will convert Workdays to Calendar Days by multiplying by 1.4 for a 5-day work week or less; 1.2 for a 6-day work week; and 1 for a 7-day work

week; and extend the Completion Date by the resulting number of Calendar Days plus any holidays the Contractor does not normally work that occur in the extension period. When the conversion of Workdays to Calendar Days results in a decimal of 0.5 or greater, the Engineer will round the number of Calendar Days to the next highest whole number. When the conversion results in a decimal less than 0.5, the Engineer will delete the decimal portion of the Calendar Days.

The Engineer will not grant an extension of time for delays incurred from December 1 to April 30 unless the Contractor's accepted progress schedule depicts work on the critical path occurring during this period.

The Engineer may order the Contractor to continue Work after November 30 and compensate the Contractor for costs incurred due to cold weather Work.

The Contractor's plea that insufficient time was specified is not a valid reason for an extension of time.

The LPA will relieve the Contractor from associated liquidated damages, as specified in 108.07, if the Engineer extends the Completion Date under 108.06.A.

The extended Completion Date shall then have the same standing and effect as though it was the original Completion Date.

If the Contractor contends that an excusable delay is also compensable, as specified in 108.06.D, submit a detailed cost analysis of the requested additional compensation along with the request for extension of Completion Date.

B. Excusable, Non-Compensable Delays. Excusable, non-compensable delays are delays that are not the Contractor's or the LPA's fault or responsibility. The Engineer will not grant additional payment for excusable, non-compensable delays.

The following are excusable, non-compensable delays:

1. Delays due to floods, tornadoes, lightning strikes, earthquakes, or other cataclysmic phenomena of nature.
2. Delays due to weather as specified in 108.06.C.
3. Extraordinary delays in material deliveries the Contractor or its suppliers cannot foresee or avoid resulting from freight embargoes, government acts, or area-wide material shortages. Delays due to the Contractor's, subcontractor's, or supplier's insolvency or mismanagement are not excusable.
4. Delays due to civil disturbances.
5. Delays from fires or epidemics.
6. Delays from labor strikes that are beyond the Contractor's, subcontractor's, or supplier's power to settle and are not caused by improper acts or omissions of the Contractor, subcontractor, or supplier.
7. Added quantities that delay an activity on the critical path.
8. All other delays not the Contractor's and LPA's fault or responsibility.

C. Extension to the Completion Date for Weather or Seasonal Conditions. A weather day is defined as a workday that weather or seasonal conditions reduced production by more than 50 percent on items of work on the critical path. Submit the dates and number of weather days in writing to the Engineer at the end of each month. In the event the Contractor fails to submit weather days at the end of each month the Engineer will determine the dates and number of weather days from project records.

Delays caused by weather and seasonal conditions should be anticipated and will be considered as the basis for an extension of time when the Contractor's accepted progress schedule depicts Work on the critical path and the actual workdays lost exceeds the number of work days lost each month as determined by Table 108.06-1.

TABLE 108.06-1

Month	Number of Workdays Lost Due to Weather
January	8
February	8
March	7
April	6
May	5
June	5
July	4
August	4
September	5
October	6
November	6
December	6

This table applies to the duration between contract execution and original completion date. Extensions for weather days beyond the original completion date will be for the actual workdays lost each month.

Lane closures within the project, 60 days or less as indicated in the contract documents, which are impacted by weather will be extended for the actual work days lost each month. Lane closures within the project, 61 days or longer as indicated in the contract documents, which are impacted by weather will be extended when the actual work days lost exceeds the number of anticipated work days lost each month as determined by Table 108.06-1.

The Engineer will not consider weekends and holidays as lost workdays unless the Contractor normally works those days or unless the Engineer directs the Contractor to work those days.

D. Excusable, Compensable Delays. Excusable, compensable delays are delays that are not the Contractor's fault or responsibility, and are the LPA's fault or responsibility or are determined by judicial proceeding to be the LPA's sole responsibility or are the fault and responsibility of a local government. For the following excusable, compensable delays, the Engineer will extend the Completion Date if the conditions specified in 108.06.A are met:

1. Delays due to revised Work as specified in 104.02.B, 104.02.D, or 104.02.F.
2. Delays due to utility or railroad interference within the Project limits.
3. Delays due to an Engineer-ordered suspension as specified in 104.02.C.
4. Delays due to acts of the government or a political subdivision other than the LPA.
5. Delays due to the neglect of the LPA or its failure to act in a timely manner.

Compensation for excusable, compensable delays will be determined by the Engineer according to 109.05.D.

E. Non-Excusable Delays. Non-excusable delays are delays that are the Contractor's fault or responsibility. All non-excusable delays are non-compensable.

F. Concurrent Delays. Concurrent delays are separate critical delays that occur at the same time. When a non-compensable delay is concurrent with a compensable delay, the Contractor is entitled to additional time but not entitled to additional compensation.

108.07 Failure to Complete on Time. If the Contractor fails to complete the Work by the Completion Date, then the PRC and/or CPE, if satisfied that the Contractor is making reasonable progress, and deems it in the best interest of the public, may allow the Contractor to continue in control of the Work. The LPA will pay the Contractor for Work performed on the Project less any liquidated damages incurred.

If the Work is not completed by the Completion Date and the PRC and/or CPE permits the Contractor to remain in control, prosecute the Work at as many different places, at such times, and with such forces as the PRC requests. Provide a written plan for the completion of the Work.

For each calendar day that Work remains uncompleted after the Completion Date, the LPA will deduct the sum specified herein from any money due the Contractor, not as a penalty, but as liquidated damages. The PRC will adjust the Completion Date or other contractually mandated dates for delays specified in 108.06.B.7 and 108.06.D.

Permitting the Contractor to continue and complete the Work or any part of the Work after the Completion Date, or after extensions to the Completion Date, will in no way operate as a waiver on the part of the LPA of any of its rights under the Contract.

Provided the project is available for use as intended by the Contract and the Work remaining will not impact traffic, the Contractor may submit a request that the LPA suspend the assessment of liquidated damages for a stated period of time. For the limited purposes of assessing liquidated damages, the closing of a shoulder is not considered an impact upon traffic. Submit this request within 30 days of the assessment of the liquidated damages. In addition to the written plan required to remain in control of the Work as stated above, this request should include at a minimum the Work left to be completed, the reason(s) the Work is incomplete or on hold, as well as, methods, resources and timelines for pursuing the same. This will define diligent pursuit of the work. Once accepted, and provided both of the following criteria are met, the LPA may suspend the assessment of liquidated damages:

- A. The Contractor is diligently pursuing the remaining Work.
- B. Necessary items are completed and operational to provide an appropriate level of safety to the traveling public. These items include but are not limited to signs, pavement markings, guardrail, attenuators, signals and RPM's.

TABLE 108.07-1 SCHEDULE OF LIQUIDATED DAMAGES

Original Contract Amount (Total Amount of the Bid)		Amount of Liquidated Damages to be Deducted for each Calendar Day of Overrun in Time
From More Than	To and Including	
\$0.00	\$500,000	\$400
\$500,000	\$2,000,000	\$600
\$2,000,000	\$10,000,000	\$900
\$10,000,000	\$50,000,000	\$1,650
Over \$50,000,000		\$3,970

108.08 Unsatisfactory Progress and Default of Contractor. The PRC and/or CPE will notify the Contractor in writing of unsatisfactory progress for any of the following reasons:

- A. The Contractor has not commenced the Work by the dates established in the schedule.
- B. The Contractor does not proceed with the Work in a manner necessary for completion of the Project by the Completion Date.
- C. The Contractor is performing the Work improperly.
- D. The Contractor abandons, fails, or refuses to complete the Work.
- E. Any other reason the PRC and/or CPE believes jeopardizes completion of the Work by the Completion Date.

If the Contractor does not respond to the satisfaction of the PRC and/or CPE, the PRC and/or CPE may declare the Contractor in default and may notify the Contractor and Surety that the responsibility to complete the Work is transferred to the Surety. Upon receipt of this notification, the Contractor's right to control and supervise the Work will immediately cease. In such a case, the PRC and/or CPE will proceed as specified in ORC 5525.17. The defaulted Contractor will not be compensated for costs resulting from the default and is not eligible to be retained by the Surety to complete the Work. If it is determined that the LPA's default of the Contractor according to 108.08 is wrongful, then the default will revert to a termination of the Contract according to 108.09.

108.09 Termination of the Contract for Convenience of the LPA. The PRC and/or CPE may terminate the Contract at any time for the convenience of the LPA. The LPA will compensate the Contractor according to 109.04 and 109.05 for termination of the Contract for the convenience of the LPA. This subsection is subject to the provisions of ORC 5525.14.

108.10 Payroll Records. Keep payroll records as specified in ORC 4115.07 or as required by Federal law.

Authorized representatives of the PRC and/or CPE may inspect the certified payroll and other payroll records. Upon completion of the Work and before receiving the final estimate and when required by ORC 4115.07, submit an affidavit stating that wages have been paid according to the minimum rates specified in the Contract Documents.

109 ACCEPTANCE, MEASUREMENT, AND PAYMENT

109.01 Measurement of Quantities. The LPA will measure the quantities of Work and calculate payments based on the method of measurement and basis of payment provisions provided in these Specifications. When the following units of measure are specified, the LPA will measure quantities as described below unless otherwise specified in the Contract Documents. The accuracy for both Daily Diary payment and Final Quantity payment will be in accordance with Supplement 1133.

Lump Sum. Not measured. Describes payment as reimbursement for all resources necessary to complete the Work. When a complete structure or structural unit is specified as the unit of measurement, the unit will include all necessary fittings and accessories.

Each. Measured by the number of individual items of Work completed.

Foot (Meter). Measured parallel to the longitudinal base or foundation upon which items are placed, or along the longitudinal surface of the item. Measured vertically to the nearest 0.1 foot (0.01 m), with a minimum vertical measurement of 1 foot (0.10 m), at each unit.

Square Yard or Square Foot (Square Meter). Measured by a two-dimensional area method on the surface of the item.

M Square Feet. One thousand square feet.

Cubic Yard (Cubic Meter). Measured by a three-dimensional volume method. Measure all “loose material” or material “measured in the vehicle” by the cubic yard (cubic meter). Haul material “measured in the vehicle” in approved vehicles and measure in the vehicle at the point of delivery. For this purpose, use approved vehicles of any type or size satisfactory to the Engineer, provided the vehicle’s bed is of such type that the actual contents are readily and accurately determined. Unless all approved vehicles on a job are of uniform capacity, each approved vehicle must bear a legible identification mark indicating the specific approved capacity. The Inspector may reject all loads not hauled in such approved vehicles.

Cubic Yard (Cubic Meter) for Asphalt Concrete. Measure as specified in 401.12.

Acre (Hectare). Measured by a two-dimensional area method on the surface to the nearest 0.1 acre (0.05 ha).

Pound (Kilogram). Measured by actual item net weight avoirdupois (mass).

Ton (Metric Ton). The term “ton” means the short ton consisting of 2000 pounds avoirdupois. The term “metric ton” means 1000 kilograms. Weigh all materials that are proportioned by weight on accurate and approved scales that are operated by competent, qualified personnel at locations approved by the Engineer. However, car weights will not be acceptable for materials to be passed through mixing plants. If trucks are used to haul material being paid for by weight, weigh the empty truck at least once daily and as the Engineer directs and only if the weight of the truck is used in determining the ticket weight. Place a plainly legible identification mark on each truck bearing the weight of the truck.

For Work on a tonnage basis, file with the Engineer receipted freight bills for railroad shipments and certified weight-bills when materials are received by any other method, showing the actual tonnage used. For Work on a volume basis, itemize evidence of the volume used.

Gallon (Liter). Measured by actual item liquid volume. The LPA will measure the following materials by the gallon (liter) at the following temperatures:

Temperatures	Items
60 °F (16 °C)	Creosote for Priming Coat, Creosote Oil, Creosote Solutions for Timber Preservatives, Asphalt Primer for Water-proofing, and Liquefier
100 °F (38 °C)	RC, MC Asphalt Emulsions, CBAE, Primer 20, and Primer 100
300 °F (149 °C)	Asphalt Binder

Measure tank car outage of asphalt material at its destination before any material has been removed from the tank car according to Supplement 1060.

Convert the net weight of asphalt material shipments to gallons (liters) at the specified pay temperature according to Supplement 1060.

Convert the gallons (liters) at the measured temperature to gallons (liters) of asphalt material at the specified pay temperature according to Supplement 1060.

M Gallon. One thousand gallons.

Thousand Board Feet, MBF (Cubic Meter). Measure timber by MBF (cubic meter) actually incorporated in the structure. Base the measurement on nominal widths, thicknesses, and the extreme length of each piece.

Standard Manufactured Items. When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by size, unit weight, section dimensions, etc., such identification will be to nominal weights or dimensions set by the industry.

109.02 Measurement Units. The LPA will measure using either English or metric units as indicated in the Contract Documents. Use the Tables 109.02-1 and 109.02-2 to convert units when required. If Tables 109.02-1 and 109.02-2 do not provide a required factor, then use the appropriate factor provided in the IEEE/ASTM SI 10.

TABLE 109.02-1 ENGLISH TO SI (METRIC) CONVERSION FACTORS

Symbol	When You Know	Multiply By	To Find	Symbol
Length				
mil	mils	25.4	micrometers	μm
in	inches	25.4	millimeters	mm
ft	feet	0.3048	meters	m
yd	yards	0.9144	meters	m
mi	miles	1.609347	kilometers	km
Area				
in^2	square inches	645.16	square millimeters	mm^2
ft^2	square feet	0.09290304	square meters	m^2
yd^2	square yards	0.8361274	square meters	m^2
ac	acres	0.4046873	hectares	ha
ac	acres	4046.873	square meters	m^2
mi^2	square miles	2.589998	square kilometers	km^2
Volume				
fl oz	fluid ounces	29.57353	milliliters	mL
gal	gallons	3.785412	liters	L
ft^3	cubic feet	0.02831685	cubic meters	m^3
yd^3	cubic yards	0.7645549	cubic meters	m^3
Mass				
oz	ounces	28.34952	grams	g
lb	pounds	0.4535924	kilograms	kg
T	2000 pounds	0.9071847	metric tons	t
Temperature				
$^{\circ}\text{F}$	Fahrenheit	$C = (F-32)/1.8$	Celsius	$^{\circ}\text{C}$
Illumination				
fc	foot-candles	10.76391	lux	lx
fl	foot-lamberts	3.426259	candelas per square meter	cd/m^2
Force and Pressure or Stress				
lbf·ft	pounds-force foot	1.355818	newton meter	N·m
lbf	pounds force	4.448222	newtons	N
lbf/ft^2 (psf)	pounds force per square foot	47.88026	pascals	Pa
lbf/in^2 (psi)	pounds force per square inch	0.006894757	megapascals	MPa

TABLE 109.02-2 SI (METRIC) TO ENGLISH CONVERSION FACTORS

Symbol	When You Know	Multiply By	To Find	Symbol
Length				
µm	micrometers	0.03937	mils	mil
mm	millimeters	0.03937	inches	in
m	meters	3.28084	feet	ft
m	meters	1.093613	yards	yd
km	kilometers	0.62137	miles	mi
Area				
mm ²	square millimeters	0.00155	square inches	in ²
m ²	square meters	10.76391	square feet	ft ²
m ²	square meters	1.19599	square yards	yd ²
ha	hectares	2.4710437	acres	ac
m ²	square meters	0.000247	acres	ac
km ²	square kilometers	0.3861	square miles	mi ²
Volume				
mL	milliliters	0.033814	fluid ounces	fl oz
L	liters	0.264172	gallons	gal
m ³	cubic meters	35.31466	cubic feet	ft ³
m ³	cubic meters	1.30795	cubic yard	yd ³
Mass				
g	grams	0.035274	ounces	oz
kg	kilograms	2.204622	pounds	lb
t	metric tons	1.1023114	2000 pounds	T
Temperature				
°C	Celsius	$F = 1.8C + 32$	Fahrenheit	°F
Illumination				
lx	lux	0.09290304	foot-candles	fc
cd/m ²	candelas per square meter	0.29186352	foot-lamberts	fl
Force and Pressure or Stress				
N·m	newton meters	0.7375621	pounds-foot force	lbf ft
N	newtons	0.22480892	pound force	lbf
Pa	pascals	0.02088543	pounds force per square foot	lbf/ft ² (psf)
MPa	megapascals	145.03774	pounds force per square inch	lbf/in ² (psi)

109.03 Scope of Payment. Payment of the Contract Price is full compensation for all resources necessary to complete the Contract Item and maintain the Work. Assume liability for risk, loss, damage, or expense resulting from the Work. The Contract Price and Contract Time shall only be changed by written Change Order or as determined by the LPA in writing in accordance with the contract documents.

109.04 Compensation for Altered Quantities, Eliminated Items or Termination of the Contract for Convenience of the LPA. If the agreed quantities of contract items vary from the quantities in the Contract, the LPA will make payment at the original Contract unit prices for the agreed quantities of Work.

A. If an item is eliminated in accordance with 104.02.E or the contract is terminated in accordance with 108.09 the LPA will pay the following in addition to that provided by 104.02.D:

1. Restocking charges supported by paid invoices and an additional 5 percent markup on the compensation for overhead and profit.
2. The cost of material transferred to the LPA in lieu of restocking or disposal. The allowed compensation is the paid invoice cost plus 15 percent markup, but no more than the unit bid price for the reference number involved.

3. Hauling costs, if not included in restocking charges, for returned material and for material delivered to the LPA.

B. If the project is terminated for convenience of the LPA, the LPA will negotiate compensation with the Contractor for actual costs incurred as a result of the termination. The LPA will pay for Extra Work as stipulated in approved Extra Work Change Orders or written authorizations subject to the limitations set forth in ORC 5525.14. Such authorizations for emergencies and to avoid Project delays are in advance of an approved Extra Work Change Order and commit the LPA only to the terms of the authorizations. The LPA will pay for Extra Work after the approval of the subsequent Change Order.

109.05 Changes and Extra Work.

A. General. If the LPA revises the Contract under: 104.02, 105.07, 105.10, 105.13, 107.10, 107.14, 107.15, 108.09, 109.06, or 109.07, the LPA will pay for changes and Extra Work with a Change Order using the sequence specified in 109.05.B through 109.05.E.

In establishing the method of payment for contract changes or extra work orders, force account procedures shall only be used when strictly necessary, such as when agreement cannot be reached with the Contractor on the price of a new work item, or when the extent of work is unknown or is of such character that a price cannot be determined to a reasonable degree of accuracy. The reason or reasons for using force account procedures shall be documented.

Unless otherwise stated in 109.05, the compensation provided in 109.05.B through 109.05.E constitutes payment in full for all changes and Extra Work completed by original Contract Price, agreed unit price, agreed lump sum price, and for work performed on a force account basis, including:

1. Administration.
2. Superintendence.
3. Project and field office overhead.
4. Home office overhead.
5. Use of tools and equipment for which no rental is allowed.
6. Profit.
7. Taxes other than sales tax.

8. Premiums on insurance including additional premiums for Commercial General Liability Insurance required by 107.12.B and any additional coverage carried by the Contractor or subcontractor, excluding pollution and railroad General Liability Insurance. The LPA will pay the Contractor's pollution and railroad liability insurance premiums, if required by the contract, by a separate Change Order for the cost of the premium without any markup. When the Contractors or subcontractors basic rate for General Commercial Liability Insurance required by 107.12.B is greater than 5 percent of payroll, the LPA will pay directly without markup the portion of the premium in excess of 5 percent and provide copies of paid premiums.

Sales tax will not be allowed on any item for which tax exemption was obtained.

B. Negotiated Prices. Negotiated prices for changes and Extra Work shall be comparable to prices that would have resulted from a competitive bid contract. The Engineer and Contractor will negotiate agreed unit or lump sum prices using one or more of the following methods:

1. Original Contract prices for similar work but adjusted for:
 - a. increased or decreased material costs specified in 109.05.C.3.
 - b. increased or decreased labor costs specified in 109.05.C.2
 - c. increased or decreased equipment costs specified in 109.05.C.4

Adjustments of these prices for inflation or markup for subcontractor work is not allowed.

2. State-wide average unit price awarded for the item or items as listed in the LPA's annual "Summary of Contracts Awarded." These prices may be adjusted for inflation using factors issued by the ODOT Office of Construction Administration. No markup for subcontractor work is allowed.

3. Average price awarded on three different projects of similar work and quantity. These prices may be adjusted for inflation using factors issued by the ODOT Office of Construction Administration. No markup for subcontractor work is allowed.

4. Prices computed by the ODOT Office of Estimating.

5. Cost analysis of labor, material, equipment, and markups as allowed in 109.05.C.
6. For the cost of compensable delays as defined in 108.06, prepare a cost analysis as allowed by 109.05.D.

Provide proposed pricing and cost justification for changes or Extra Work within 5 business days after the LPA's request. The LPA will respond within 5 business days after receipt of the Contractor's proposal. The LPA and the Contractor can mutually agree to extend these 5-day time limits.

If the LPA negotiates with the Contractor but does not agree on a price adjustment, the Engineer may direct the Contractor to perform all or part of the revised Work under force account.

C. Force Account.

1. General. The Engineer may direct the Contractor to perform the revised Work under force account. Submit a written proposal and estimated costs for the Work, including the planned equipment, materials, labor, and a work schedule.

The LPA will pay the Contractor as specified in 109.05.C as full compensation for performing the force account Work. The Project and Contractor personnel will document the labor and equipment used on the force account work on a Daily Force Account Record. At the end of each Workday, the Project and Contractor personnel will compare and sign the Daily Force Account Record. The LPA will make no force account payment before the Contractor submits an itemized statement of the costs for that work.

The Engineer will examine and, if found to be acceptable, approve all rates and costs submitted by the Contractor.

Provide the following content in itemized statements for all force account work:

- a. Name, classification, date, daily hours, total hours, rate, and amount for all labor.
- b. Designation, dates, daily hours, total hours of actual operation and idle time, Blue Book rate with reference or category, and amount for each unit of equipment and the applicable Blue Book hourly operating cost for each unit of equipment and invoices for all rental equipment. The designation includes the manufacturer's name or trademark, model number, and year of manufacture.
- c. Quantities of materials and prices.
- d. Transportation charges on materials, free on board (F.O.B.) at the job site.
- e. Cost of workers' compensation insurance premiums, all applicable insurance premiums, unemployment insurance contributions, and social security tax and fees or dues required by a collective bargaining agreement. Express each of these items of cost as a percentage of payroll, except fees or dues, which should be expressed as a cost per hour.
- f. Documentation showing payment for all surveying, professional, or similar specialized Work not normally a part of a LPA contract.
- g. If materials are taken from Contractor's stock and original receipted invoices for the materials and transportation charges do not exist, provide an affidavit and certify all of the following:
 - (1) The materials were taken from the Contractor's stock.
 - (2) The quantity shown was actually used for the force account work.
 - (3) The price and transportation costs represent the actual cost to the Contractor.
- h. Documentation showing payment to trucking firms and owner-operators. Submit documentation showing owner-operations status. When the trucking is subject to prevailing wage, submit payroll and equipment usage records according to 109.05.C.1.a, 109.05.C.1.b, and 109.05.C.1.e.
- i. Provide "receipted invoices" for all costs substantiated by an invoice.

If only part of the expenditure represented by an invoice is applicable to force account work, or if the invoice represents expenditure for more than one item of work, clearly indicate the actual amount of expenditure applicable to each item of work.

2. Labor. The LPA will pay the wages and fringe benefits currently in effect for each hour the Work is performed by all labor employed in the Work and all foremen in direct charge of the specific operation. The LPA will pay an additional 38 percent markup on these wages and benefits. "Fringe benefits" are the actual costs paid to, or on behalf of, workmen by reason of health and welfare benefits, pension fund benefits, or other benefits, when such amounts are required by prevailing wage laws or by a collective bargaining agreement or other employment contracts generally applicable to the classes of labor employed on the Project.

The LPA will pay the actual itemized cost, without markup, of the following payroll taxes and legally required insurances:

- a. Social Security Tax.
- b. Medicare Tax.
- c. Ohio Workers' Compensation Premiums.
- d. State and Federal Unemployment Insurance.
- e. Longshore and Harborworkers' Compensation Insurance for work from a barge or ship, or unloading material from a barge or ship.

Provide itemized statements in addition to the documentation requirements for all labor including the name, classification, date, daily hours, total hours, rate, and amount. If any person is paid more than the one rate, a separate listing shall be made for that person for each rate paid. Provide itemized statements for Ohio Workers' Compensation insurance premiums, all applicable insurance premiums, State and Federal Unemployment Insurance contributions, and Social Security Tax and fees or dues required by a collective bargaining agreement. Express each of these items of cost as a percentage of payroll, except fees or dues, which shall be expressed as a cost per hour.

Instead of itemizing the cost of Social Security Tax, Ohio Workers' Compensation, and State and Federal Unemployment Insurance, the Contractor may elect to receive as compensation for these payroll taxes and premiums, an amount equal to 22 percent of the paid wages. If the Contractor pays fringes directly to the worker in lieu of paying into a fringe benefit program, then the LPA will treat these fringe payments as paid wages when calculating the allowed 22 percent compensation.

The LPA will pay, without markup, the actual itemized cost of fees and dues paid to labor unions or to business associations when they are based on payroll hours and required by a collective bargaining agreement.

The LPA will not pay for wages or benefits for personnel connected with the Contractor's forces above the classification of foreman that have only general supervisory responsibility for the force account work.

If the foreman or timekeeper is employed partly on force account work and partly on other work, the Contractor shall prorate the number of hours between the force and non-force account work according to the number of people on each task as shown on payrolls.

The LPA will pay the prevailing wage and fringe rates that apply to the Project for the classifications required for Extra Work. The Contractor must provide payroll records for pay rates higher than the prevailing wages and establish that the higher than prevailing rates are paid for original Contract Work. The LPA will pay for foremen and time keepers not covered by prevailing wages not more than the salaried rate they receive when engaged in original Contract Work.

The LPA will pay actual costs for subsistence and travel allowances when such payments are required by the collective bargaining agreement or other employment contracts applicable to the classes of labor employed on the Project. The LPA will not pay a percent markup on these costs.

3. Materials. The LPA will pay the Contractor's actual invoice costs, including applicable taxes and actual freight charges, for Engineer approved materials the Contractor uses in force account Work. The LPA will pay an additional 15 percent markup on these costs.

Freight or hauling costs charged to the Contractor and not included in unit prices shall be itemized and supported by invoices. The cost of owned or rented equipment used to haul materials to the project is not part of the materials cost. Such equipment, when used for hauling materials, shall be listed under cost of equipment.

Provide itemized statements in addition to the documentation requirements for all equipment including the quantity and price of each material and transportation charges free on board (F.O.B.) at the job site. Attach invoices to support the quantities of materials used, unit prices paid and transportation charges. If the Contractor uses materials from the Contractor's stock and original receipted invoices for the materials and transportation charges do not exist, the LPA and the Contractor will agree on a price that represents the actual cost to the Contractor. Provide an affidavit and certify all of the following:

- a. The materials were taken from the Contractor's stock.
- b. The quantity shown was actually used for the force account work.
- c. The price and transportation costs represent the actual cost to the Contractor.

Do not incorporate materials into the Work without a price agreement.

4. Equipment.

a. General. The LPA will pay the Contractor's costs for equipment the Engineer deems necessary to perform the force account work for the time directed by the Engineer or until the Contractor completes the force account Work, whichever happens first. The LPA will pay the Contractor the established rates for equipment only during the hours that it is operated, except as otherwise allowed elsewhere in these Specifications. The LPA will pay for non-operating hours at the idle equipment rate as specified in 109.05.C.4.c. Report equipment hours to the nearest 1/2 hour. The established equipment rates in these Specifications include compensation for overhead and profit except as otherwise specified.

The LPA will pay for use of Contractor-owned equipment the Engineer approves for force account Work at established rates. The LPA will pay the rates, as modified in 109.05.C.4.b, given in the Equipment Watch Cost Recovery (formerly Rental Rate Blue Book), by EquipmentWatch, a division of Penton Business Media, Inc.

Provide, and the Engineer will confirm, the manufacturer's ratings and manufacturer-approved modifications required to classify equipment for rental rate determination. For equipment with no direct power unit, use a unit of at least the minimum recommended manufacturer's rating.

The LPA will not pay rental for small tools or equipment that show a daily rate less than \$5.00 or for unlisted equipment that has a value of less than \$400.

Tool trucks will be allowed for compensation if they are used at the force account site. Only the tools used from the tool truck will be allowed for compensation. Tools in the tool truck that are not used in the force account work will not be compensated. A tool trailer that remains at the Contractor's office or yard will not be allowed on the force account work. Tool trailers that are taken to the force account site will be allowed for compensation along with the tools used on the force account work that were taken from the trailer.

Treat traffic control devices used in Maintaining Traffic and owned by the Contractor as owned equipment. Allowed rates for common traffic control devices and concrete barrier that are not listed in the Blue Book will be as determined by the LPA.

Use Engineer approved equipment in good working condition and providing normal output or production. The Engineer may reject equipment not in good working condition or not properly sized for efficient performance of the Work.

For each piece of equipment used, whether owned or rented, provide the Engineer with the following information:

- (1) Manufacturer's name or trademark.
- (2) Equipment type.
- (3) Year of manufacture.
- (4) Model number.
- (5) Type of fuel used.
- (6) Horsepower rating.
- (7) Attachments required, together with their size or capacity.
- (8) All further information necessary to determine the proper rate.
- (9) Dates, daily hours, total hours of actual operation and idle time,
- (10) Blue Book rate with reference or category,
- (11) Amount
- (12) Applicable Blue Book hourly operating cost
- (13) Invoices for all rental equipment.

b. Hourly Owned Equipment Rates. The base rate for the machine and attachments represent the major cost of equipment ownership, such as depreciation, interest, taxes, insurance, storage, and major repairs. The hourly operating rate represents the major costs of equipment operation, such as fuel and oil lubrication, field repairs, tires, expendable parts, and supplies.

For all equipment used on force account work, determine, and have the LPA confirm, the hourly owned equipment rates as follows:

$$\text{HOER} = [\text{RAF} \times \text{ARA} \times (\text{R} / 176)] + \text{HOC}$$

Where:

HOER = hourly owned equipment rate
RAF = regional adjustment factor shown in the Blue Book
ARA = age rate adjustment factor shown in the Blue Book
R = current Blue Book monthly rate

HOC = estimated hourly operating cost shown in the Blue Book

However, compensation for equipment normally used on a 24 hours per day basis will not exceed the monthly rate plus adjustments and operating costs.

The rate adjustment factor assigned to any attachment will be the yearly factor as determined for the base equipment.

When multiple attachments are included with the rental equipment, only the attachment having the highest rental rate will be eligible for payment, provided that the attachment has been approved by the Engineer as being necessary to the force account Work.

When a piece of owned equipment is not listed in the Blue Book, use the rate for similar equipment found in the Blue Book or use 6 percent of the purchase price as the monthly rate (*R*) and add the hourly operating rate found in the Blue Book for similar equipment of the same horsepower.

For equipment brought to the Project exclusively for force account work and on the Project for less than a month, multiply the monthly rate (*R*) by the factor listed below:

TABLE 109.05-1

Working Hours	Factor
Less than or equal to 8.0	2.00
8.1 to 175.9	2.048 - (hours/168)
176 or greater	1.00

The term "WORKING HOURS," as used in Table 109.05-1, includes only those hours the equipment is actually in operation performing force account work; apply the factor, as determined above, to these actual working hours only. Calculate compensation for any idle time according to 109.05.C.4.c without application of the factor.

The LPA will pay as working equipment for the entire Workday equipment used intermittently during the Workday. The following criteria qualify for intermittently used equipment:

- (1) Equipment dedicated to the force account exclusively all day and not used on bid work.
- (2) Equipment works before and after the intermittent idle period and its total working time during the Workday is at least 2 hours.

Equipment that is captive to the force account work (i.e. it must remain at the force account site), but does not qualify for intermittently used owned equipment, is paid as idle equipment according to C&MS Section 109.05.C.4.c. for the time it is not working.

c. Hourly Idle Equipment Rate. For equipment that is in operational condition, on site, and necessary for force account Work, but is idle, the LPA will pay an hourly idle equipment rate. The procedure to determine the hourly idle equipment rate for Contractor owned equipment is as follows:

$$\text{HIER} = \text{RAF} \times \text{ARA} \times (\text{R} / 176) \times (1/2)$$

Where:

HIER = Hourly idle equipment rate.

RAF = Regional adjustment factor shown in the Blue Book.

ARA = Age rate adjustment factor shown in the Blue Book.

R = Current Blue Book monthly rate.

If rented equipment necessary for force account work is idle, the LPA will pay the Contractor for the actual invoiced rates prorated for the duration of the idle period. The actual invoiced rates must be reasonably in line with the Blue Book rates and approved by the Engineer. The LPA will pay a 15 percent markup for overhead and profit for the actual invoiced rates during the idle period.

The LPA will not pay idle owned equipment costs for more than 8 hours in a 24-hour day or 40 hours in a week.

The LPA will not pay for inoperable equipment.

The Engineer may order specific equipment to the site up to 5 days before its planned usage. If this equipment is not used for other work, the LPA will pay for it as idle equipment until used.

The LPA will pay for the cost of idle owned or rented equipment when the Work was suspended for the convenience of the State. The LPA will not pay the cost of idle equipment when the Work was suspended by the Contractor for the Contractor's own reasons.

The LPA will only pay for the number of Calendar Days during the existence of the suspension. The LPA will not compensate the Contractor for days that the Engineer determined were lost to weather.

The LPA will only pay for equipment physically located at the Project site that was received to prosecute the scheduled work during the delay.

Compensation for idle equipment will stop at the completion of the force account Work or at the end of the suspension of Work.

d. Rented Equipment. The LPA will pay a 15 percent markup for overhead and profit for all rented equipment, its corresponding Blue Book hourly operating costs, and State and Local sales taxes.

(1) Equipment Rented Solely for Force Account Work. If the Contractor rents or leases equipment from a third party exclusively for force account Work, the LPA will pay the actual invoiced amount. The actual invoiced rates must be reasonably in line with the Blue Book and approved by the Engineer. The LPA will pay a 15 percent markup for overhead and profit for all rented equipment paid for by the actual invoices. Add the Blue Book hourly operating cost to the marked up actual invoiced rates.

(2) Equipment Rented for Original Contract Work, but Used for Force Account Work. If the Contractor uses rented equipment currently on the Project for original Contract Work to perform force account Work, then determine the hourly outside-rented equipment rate as follows:

$$\text{HRER} = (\text{HRI} \times 115\%) + \text{HOC}$$

Where:

HRER = hourly rented equipment rate

HRI = hourly rental invoice costs prorated for the actual number of hours that rented equipment is operated solely on force account work. Use a monthly invoice rate divided by 176, a weekly invoice rate divided by 40, or a daily invoice rate divided by 8.

HOC = hourly operating cost shown in the Blue Book

The LPA will not compensate for rental rates that exceed the Blue Book rates unless approved in advance of the Work by the Engineer.

e. Moving of Equipment. The LPA will also pay for the time required to move needed equipment to the location of the force account work and to return it to its original location. The LPA will pay for loading and transportation costs instead of moving time if equipment is moved by means other than its own power. Moving time back to the original location or loading and transportation costs will not be allowed if the equipment is used at the site of the force account work on contract items or related work.

The LPA will consider the actual cost of transferring the equipment to the Project and returning it to the original location as an additional expense and pay for it as specified, for equipment moved on the Project exclusively for force account work.

The Engineer will confirm the original location of the equipment before the Contractor moves and uses it for force account work.

If the equipment is transported by a common carrier, the allowance is the invoiced amount paid for the freight plus 15 percent. However, if the Contractor's forces transport the equipment, the allowable compensation will be Blue Book rate of the hauling unit and hourly Blue Book operating cost plus the driver's wages and the cost of loading and unloading the equipment calculated according to 109.05.C.2.

5. Foreman's Transportation. The LPA will pay the Blue Book rate for every hour the foreman's truck is on the force account site or moving to or from the site. This rate includes equipment cost, fuel and lubricants, overhead, profit, and mobile phone or two-way radios.

6. Subcontract Work. For Work performed by an approved subcontractor, the LPA will pay an amount to cover administrative costs of 8% on the first \$10,000 of work and 5% for work in excess of \$10,000 as provided in 109.05.C.2 through 109.05.C.5. No additional mark-up is allowed for work of a sub-subcontractor or trucking services employed by a subcontractor.

7. Final Adjustment to Premium for Contract Bonds. The final bond premium amount for the payment and performance bonds will be computed based on the actual final contract value. For the purpose of computing a bond

premium adjustment the actual final contract value is defined as the whole sum of money, excluding any bond premium adjustment, which is passed from the LPA to the Contractor as a result of the completion of the Work. If the actual final contract value is different from the original contract value, the premium shall be adjusted accordingly; either by refund of part of the original bond premium by the Contractor if the original contract value is larger than the actual final contract value; or by payment of additional bond premium by the LPA if the original contract value is smaller than the actual final contract value. Additional payment by the LPA or refund by the Contractor will be based on the difference between the invoiced bond premium for the original contract value and the invoiced bond premium for the actual final contract value without any markup. A final bond premium adjustment will not be made when the actual final contract value differs from the original contract value by less than \$ 40,000.00.

8. Trucking.

a. Trucking firms and owner operators not subject to prevailing wage will be paid at the invoiced cost plus 8% on the first \$10,000 of trucking and 5% for trucking in excess of \$10,000 to cover administrative costs.

b. Trucking that is subject to the prevailing wage law will be compensated according to 109.05.C.1, 109.05.C.2, 109.05.C.4, 109.05.C.6, and 109.05.C.10.

Provide documentation showing payment to trucking firms and owner-operators and owner-operations status. When the trucking is subject to prevailing wage, submit payroll and equipment usage records according to 109.05.C.2 and 109.05.C.4.

9. Professional and Specialized Work. The following work, when performed by a firm hired by the Contractor, is paid at the reasonable and fair market invoiced cost plus 8% on the first \$10,000 of work and 5% for work in excess of \$10,000.

a. Surveying.

b. Engineering design.

c. Specialized work that is not normally part of a LPA Contract and is not normally subject to prevailing wage.

d. Installation, periodic maintenance, and removal of traffic control devices under Item 614 performed by a traffic control service or rental company, provided the workers are not on the Project full-time. Maintenance of Traffic services performed by LEO.

e. Other professional or specialized work not contemplated at the time of Bid.

Provide documentation showing payment for professional and specialized Work.

10. Payment for Force Account Work. Submit an analysis of estimated cost prepared in accordance with 109.05C for work that will be performed on a force account basis. Attach an original affidavit to the analysis stating:

"Labor rates shown are the actual rates paid for labor, unit prices for materials and rates for owned and rented equipment have been estimated on the basis they are not in excess of those charged in the area in which the work will be performed."

The Engineer will process an Estimated Cost of Force Account (ECFA) if the amount of the force account work is likely to be greater than \$100,000 and is expected to take more than two weeks to complete. The Engineer will process an Actual Cost of Force Account (ACFA) to make any necessary adjustment between the ECFA and the final itemized costs for the force account work.

For force account work estimated to be less than \$100,000 and anticipated to require less than two weeks to perform, the Engineer will process an Actual Cost of Force Account (ACFA) at the conclusion of the work.

Submit biweekly itemized statement of costs prepared from the Daily Force Account Records to the Engineer as the work is being performed. The Engineer will process estimates as the force account work is performed. Payment will only be made upon receipt of the Contractor's itemized statement of costs.

Upon conclusion of the work performed by an ECFA or work performed by an ACFA submit an itemized statement of the actual costs prepared from the Daily Force Account Record and utilizing the LPA's electronic template titled "Electronic Force Account." Submit a compact disk (CD), labeled with the Contractor's name and the project number, and a hard copy of the "Electronic Force Account." The "Electronic Force Account" template can be downloaded from the following website:

www.dot.state.oh.us/divisions/constructionmgt/admin/pages/default.aspx

The Engineer may approve an alternative electronic template provided all calculations and printouts are equivalent to those generated by the "Electronic Force Account" template.

Attach an original affidavit to the hard copy stating:

"The name, classification, total hours worked and rates paid each person listed on the Summary of Actual Cost are substantiated by actual records of persons employed on the force account work. All unit prices for materials and rates for owned and rented equipment listed on the Summary of Actual Costs are substantiated by actual records of materials and equipment actually used in performance of the force account work and the price of any owned equipment not previously agreed upon does not exceed prices charged for similar equipment in the area in which the work was performed."

Daily Force Account Records signed by both the LPA and Contractor will govern over other LPA and Contractor records subject to the following:

- a. When the Contractor is subject to a Union Contract that requires a minimum number of paid hours, the compensation will be for the verified contract minimum hours.
- b. Material quantity disagreements will be resolved by field measurements of the installed quantities or the Engineer's estimate of the amount of temporary or un-measurable material used. The Engineer may also review and consider the Contractor's material invoices and material certifications to make the final determination.

In the event the Contractor declines to sign the Daily Force Account Record, the LPA's records shall govern. Any resulting dispute must be pursued in accordance with 108.02.G.

D. Delay Costs.

1. General. If the LPA agrees that it has caused a delay, the LPA will pay for the costs specified in 109.05.D as allowed by 108.06.D, unless these costs have been previously paid as listed in 109.05.B or 109.05.C. Such payment constitutes full compensation for any and all delay costs

The LPA will make no payment for delays occurring during the period from December 1 to April 30 unless the Contractor's approved progress schedule depicts critical Work occurring throughout this period.

The LPA will not pay for delay costs until the Contractor submits an itemized statement of those costs. Provide the content specified in 109.05.C.1, for the applicable items in this statement and as follows:

- a. Proof of cost of Superintendent, or other project staff salaries, wages, and payroll taxes and insurance.
- b. Proof of cost of office rent, utilities, land rent, and office supplies.
- c. Proof of escalated cost for labor and material.
- d. Proof of material storage costs.

2. Allowable Delay Costs

a. Extended Labor. Compute labor costs during delays as specified in 109.05.C.2 for all non-salaried personnel remaining on the Project as required under collective bargaining agreements or for other Engineer-approved reasons.

b. Escalated Labor. To receive payment for escalated labor costs, demonstrate that the LPA-caused delay forced the Work to be performed during a period when labor costs were higher than planned at the time of Bid. Provide adequate support documentation for the costs, allowances, and benefits specified in 109.05.C.2. The LPA will pay wages and fringes with a 20 percent mark-up to cover administrative costs.

c. Idle Equipment or Equipment Demobilization. The LPA will pay the Contractor according to 109.05.C.4.c for idle equipment, other than small tools, that must remain on the Project during the delays. The LPA will pay the Contractor's transportation costs to remove and return equipment not required on the Project during the delays. No other equipment costs are recoverable as a result of delay.

d. Material Escalation or Material Storage. The LPA will pay the Contractor for increased material costs or material storage costs due to the delay. Obtain the Engineer's approval before storing materials due to a delay. Payment will be based upon the accepted quantity of work performed during the period for which escalated costs have been approved. The LPA will pay increased material costs with an 8 percent mark-up to cover administrative costs and any material waste inherent to the Work.

e. Field Overhead. The LPA will pay any Contractor or subcontractor for field overhead costs which include the cost of supervision, field office and office supplies, and utilities for which payment is not provided for in 109.05.D.2.f, during a delay period provided all of the following criteria are met:

(1) The Contractor or subcontractor has incurred an excusable, compensable delay that delays the Work at least 10 Calendar Days beyond the original Completion Date. These days are cumulative throughout the project.

(2) The delay for which payment of field overhead is sought is only due to delays defined in 108.06.D.2, 108.06.D.3, 108.06.D.5 or for delays due to revised Work as specified in 104.02.B or 104.02.F.

The LPA will pay the salary and fringes plus a 5 percent markup for field personnel identified in Table 109.05-4.

TABLE 109.05-4

Original Contract Amount	Field Personnel
Up to \$5,000,000	One Superintendent
\$5,000,001 to \$50,000,000	One Superintendent, One Assistant Superintendent or One Engineer, One Clerk
Over \$50,000,000	One Superintendent, One Assistant Superintendent, One Engineer, One Clerk

Superintendent's transportation is compensable at the same rate allowed for foreman's transportation in Section 109.05.C.5, which includes the cost of mobile communication devices. The allowed hours are when the superintendent is at the project site.

Superintendent's subsistence, provided this is the company's terms of compensation to such employees, as documented by the Contractor's written company policy or contracts with their employees.

The Contractor's or subcontractor's field office costs include field office trailers, tool trailers, office equipment rental, temporary toilets, and other incidental facilities and supplies. Compute these costs on a Calendar Day basis. Owned trailers are paid at the Blue Book rate. Rented trailers are paid at the invoiced cost plus a 15 percent markup. Rented office space, toilets, and office equipment are allowed a 5 percent markup. Purchased office supplies are allowed a 5 percent markup.

Office utilities include, but are not limited to, telephone, electric, water, and natural gas. Compute these costs on a Calendar Day basis and allow a 5 percent markup.

f. Home Office Overhead. The LPA will pay the Contractor for home office overhead, unabsorbed home office overhead, extended home office overhead, and all other overhead costs for which payment is not provided for in 109.05.D.2.e, including overhead costs that would otherwise be calculated using the Eichleay formula or some other apportionment formula, provided all of the following criteria are met:

(1) The Contractor has incurred an excusable, compensable delay that delays the Work at least 10 Calendar Days beyond the original Completion Date. These days are cumulative throughout the project.

(2) The delay for which payment of home office overhead is sought is only due to delays defined in 108.06.D.2, 108.06.D.3 and 108.06.D.5.

Any subcontractor that has approved C-92's for subcontracted work totaling \$4,000,000 or more is eligible for reimbursement of home office overhead provided the criteria set forth in 109.05.D.2.f.(1) and 109.05.D.2.f.(2) are met.

Payment will be made for every eligible day beyond the original contract completion date at the rate determined by 109.05.D.2.f.i. Payment for eligible days occurring during an unanticipated construction period will be calculated in accordance with 109.05.D.2.f.ii. Payment for eligible days occurring during an unanticipated winter period will be calculated in accordance with 109.05.D.2.f.iii.

(i) Home Office Overhead Daily Rate

Calculate the home office overhead daily rate using the following formula:

$$\text{Daily HOOP} = (A \times C)/B$$

Where:

- A = original contract amount
B = contract duration in Calendar Days
C = value from Table 109.05-5

TABLE 109.05-5

Original Contract Amount	C
Up to \$5,000,000	0.08
\$5,000,001 to \$25,000,000	0.06
Over \$25,000,000	0.05

Daily HOOP = home office overhead daily rate

Contract duration term, **B**, includes every Calendar Day from the execution of the Contract, unless otherwise specified by the PRC and/or CPE, to the original Contract Completion Date.

When the Contractor requests home office overhead compensation for a subcontractor, use the above formula to calculate the subcontractor's Daily HOOP; however, in the subcontractor calculation, **A** is equal to the subcontractor's portion of the original contract amount as determined by the sum of all approved C-92's issued for the subcontracted work.

(ii) Home Office Overhead Payment for an Unanticipated Construction Period

Calculate the home office overhead payment for an unanticipated construction period occurring between May 1 and November 30 using the following formula:

$$\text{CP HOOP} = \text{Daily HOOP} \times D$$

Where:

D = sum of all excusable, compensable delays in Calendar Days minus the sum of all delays due to 108.06.D.1 and 108.06.D.4 in Calendar Days

Daily HOOP = daily home office overhead rate

CP HOOP = home office overhead payment for an unanticipated construction period occurring between May 1 and November 30

The excusable, compensable delay term, **D**, is the additional, unanticipated extended period for work performed between May 1 and November 30 in Calendar Days.

(iii) Home Office Overhead Payment for an Unanticipated Winter Period

Calculate the payment for home office overhead for an unanticipated winter period occurring between December 1 and April 30 using the following formula:

$$\text{WP HOOP} = \text{Daily HOOP} \times F \times D/E$$

Where:

D = sum of all excusable, compensable delays in Calendar Days minus the sum of all delays due to 108.06.D.1 and 108.06.D.4 in Calendar Days

E = sum of all excusable, compensable delays in Calendar Days plus the sum of all excusable, non-compensable delays in Calendar Days

F = 151 for a non-leap year or 152 for a leap year

Daily HOOP = daily home office overhead rate

WP HOOP = home office overhead payment for an unanticipated winter period occurring between December 1 and April 30

Payment for Home Office Overhead for an unanticipated winter period will not be made when the value of the remaining work is below the lesser of \$500,000.00 or 10 percent of the estimated final contract value.

(iv) Total Home Office Overhead Payment

Calculate the total home office overhead payment using the following formula:

$$\text{Total HOOP} = \text{CP HOOP} + \text{WP HOOP}$$

Where:

CP HOOP = home office overhead payment for an unanticipated construction period occurring between May 1 and November 30

WP HOOP = home office overhead payment for an unanticipated winter period occurring between December 1 and April 30

Total HOOP = total home office overhead payment

g. Subsistence and Travel Allowance. The LPA will pay costs for subsistence and travel allowances for labor that must remain on the Project during the delays, when such payments are required by the collective bargaining agreement or other employment contracts applicable to the classes of labor employed on the project. Overnight lodging

will be reimbursed if the person is at a location greater than forty-five miles from their residence up to a maximum of \$106 per day. Meals and incidental expenses will be reimbursed up to a maximum of \$56 per day. The LPA will not pay a percent markup on these costs.

E. Changes in Materials. Changes in material specifications that result in increased cost to the Contractor are compensated by lump sum adjustment to the reference number. The allowed compensation is equal to the invoice supported material cost increase plus 15 percent markup for profit and overhead.

Material cost savings resulting from a specification change shall be credited to the project by a lump sum adjustment to the reference number plus a 15 percent markup if the originally specified material has not been ordered.

If the original material was ordered before the Contractor was informed of the change, the savings markup allowed is 2.5 percent in order to exclude profit on the original bid price and pay only for incurred overhead.

109.06 Directed Acceleration. The PRC and/or CPE may order the Contractor to accelerate the Work to avoid delay costs or to complete the Project early. The PRC and/or CPE and the Contractor will negotiate acceleration costs.

109.07 Inefficiency. The LPA will compensate the Contractor for inefficiency or loss of productivity resulting from 104.02 Revisions to the Contract Documents. Use the Measured Mile analysis comparing the productivity of work impacted by a change to the productivity of similar work performed under un-impacted conditions to prove and quantify the inefficiency.

Provide notice as per 108.02.F when inefficiency or loss of production is experienced resulting from 104.02 Revisions to the Contract Documents.

Use the following calculation for the Measured Mile analysis:

Additional Crew Hours = (Unit Productivity Unimpacted Period – Unit Productivity Impacted Period) / Unit Productivity Unimpacted Period x (Number of Units During Impacted Period/Unit Productivity Impacted Period).

109.08 Unrecoverable Costs. The Contractor is not entitled to additional compensation for costs not specifically allowed or provided for in 109.05 including, but not limited to, the following:

- A. Loss of anticipated profit.
- B. Consequential damages, including loss of bonding capacity, loss of bidding opportunities, insolvency, and the effects of force account work on other projects, or business interruption.
- C. Indirect costs.
- D. Attorney's fees, claim preparation expenses, and the costs of litigation.

109.09 Estimates. If satisfactory progress is being made, the Contractor will receive monthly payments equaling the Work and materials in place. The monthly payment is approximate, and all partial estimates and payments are subject to correction in the Final Estimate and payment. Payment for Work and materials shall not, in any way, prevent later rejection when defective Work or material is discovered, or constitute acceptance under 109.11 or 109.12. Any pay item deficient in material approval can be withheld for payment on an estimate.

Except for the final estimate, the LPA will not pay an estimate until the Contractor certifies to the Engineer that the work for which payment is being made was performed in accordance with the contract. Certification will be made on forms provided by the LPA.

The LPA may pay estimates twice each month if the Engineer concludes the amount of work performed is sufficient.

No estimate or payment shall be construed as acceptance of defective Work or improper materials.

The LPA will not pay the adjusted final estimate until the Contractor remedies all defective Work and accepted Work damaged by the Contractor's operations.

Interest will be paid in accordance with ORC 126.30 when warranted.

109.10 Payment for Delivered Materials. The LPA will pay, up to 75 percent of the applicable contract item, for the invoiced cost of the delivered and approved materials before they are incorporated in the Work, if the approved materials are delivered, accepted, and properly stored on the project or stored in acceptable storage places in the vicinity of the Project.

The LPA will pay for the cost of approved materials before they are incorporated in the Work when asked by the Contractor, if the Engineer determines that it is not practical to deliver the material to the Project site. This provision applies only to bulky materials that are durable in nature and represent a significant portion of the project cost, such as

aggregates, steel, and precast concrete. The LPA will pay for un-fabricated structural steel if the following requirements are met:

- A. The Contractor has provided both the Engineer and the ODOT Office of Materials Management an itemized invoice from the steel mill for the steel for which reimbursement is requested
- B. Project structural Steel design plans are complete with no forthcoming revisions. For design build projects, Contractor accepted show drawings per 501.04, will need to be provided.
- C Contractor accepted certified test data for all steel in question along with mill shipping notices have been received by the ODOT Office of Materials Management per 501.06.
- D. The steel is properly stored to allow inspection by the ODOT Office of Materials Management. It shall also be properly set apart from other material and identified as belonging to ODOT.
- E. The Contractor will provide the Engineer a written statement that under 106, the Contractor is responsible for the steel that has been paid for until the actual steel is erected and accepted in the field.
- F. Payment shall only be authorized after all the aforementioned documentation has been received by the ODOT Office of Materials Management and the steel has been inspected by the ODOT Office of Materials Management to verify that all steel listed in the itemized invoice has been received by the fabricator and properly stored. The amount to be paid shall be equivalent to the itemized invoice from the steel mill, but shall not exceed 50% of the bid price for the structural steel.

The LPA will not pay delivered materials on small warehouse items or for plant materials.

109.11 Partial Acceptance. Upon completion of a portion of the Work, the Contractor may request acceptance of a completed portion of the Work.

- A. An inspection may be performed on a completed portion of the project roadway section provided:
 - 1. All safety items are in place including permanent pavement markings.
 - 2. Traffic is in its final pattern.
 - 3. A completed portion of the project constitutes a completed geographic section of the project or a direction of traffic on a divided highway.
 - 4. Is in accordance with other contract provisions.
- B. An inspection may be performed on a completed bridge provided:
 - 1. All work on the bridge and approaches are complete, including all safety items and permanent pavement markings.
 - 2. The Contractor will not return to the bridge for any work except as allowed in 4.
 - 3. Traffic is in its final pattern.
 - 4. Painting of structural steel is either completed or scheduled to be performed.
 - 5. Is in accordance with other contract provisions.

The Final Inspector will grant written partial acceptance for that portion of the Work or reject the Contractor's request. Such written partial acceptance will designate what portion of the Work is accepted, the date of acceptance, and the warranty provisions started by the partial acceptance.

Partial acceptance will relieve the Contractor of maintenance responsibility for the designated portion of the Work. This does not relieve the Contractor of responsibility to correct defective Work or repair damage caused by the Contractor or waive any other remedy to which the LPA is entitled at law or in equity.

109.12 Final Acceptance.

A. Final Inspection. The LPA will perform a Final Inspection for the sole purpose of relieving the Contractor of maintenance responsibility for the Work.

The Final Inspection shall be a limited visual review of the Work and shall only serve as the LPA's verification that the Work appears substantially complete. Final Inspection does not waive any available rights or remedies of the LPA, nor divest the Contractor of any responsibility for compliance with the contract or liability for damages.

Notify the Engineer when the Project is complete and all of the Engineer's punch list items are complete. If the Engineer agrees the Project is complete, then within 15 business days the District Final Inspector will inspect the Work and categorize it as one of the following:

1. Unacceptable or not complete.
2. Substantially complete with punch list items found by the Final Inspector.
3. Substantially complete.

If the Final Inspector finds the Work substantially complete or substantially complete with punch list items, then the Contractor's maintenance responsibilities end on the day of the Final Inspection, except for any maintenance related to unfinished punch list items. This does not relieve the Contractor of responsibility to correct defective Work or repair damage caused by the Contractor or waive any other remedy to which the LPA is entitled at law or in equity. The Final Inspector will issue a Final Inspection Report that will document the findings of the inspection and start any warranty period.

B. Punch List. The Final Inspector will issue to the Contractor a written punch list of work required as a condition of acceptance. For project involving multiple public agencies, the Final Inspector will receive and compile punch lists from all agencies that have authority to provide one prior to issuing the LPA's punch list. The Final Inspector's punch list will stipulate a reasonable time to complete the required Work. Failure of the Contractor to complete the punch list items by the stipulated time will result in the assessment of fifty percent of the Liquidated Damages according to 108.07 for each Calendar Day for every day beyond the stipulated time the punch list work remains incomplete and beyond the revised Completion Date.

C. Finalization. The Contractor shall accept the final quantities as determined by the Engineer or provide a written notice indicating the reason for disagreement within 30 Calendar Days of receiving the Engineer's list of final quantities. The prescribed 30 Calendar Day period can be modified by mutual agreement of the Contractor and the PRC and/or CPE. If no notice of disagreement is received, then the final payment will be based on the Engineer's list of final quantities.

Supply all documents necessary for Project finalization within 60 Calendar Days from the date that the Work is physically complete. These documents include:

1. Delinquent material certifications.
2. Delinquent certified payrolls or required revised payrolls.
3. Wage affidavit required by ORC Chapter 4115 on projects without any Federal funding.
4. Delinquent force account records.
5. If applicable, DBE affidavits.
6. Any other document required to complete finalization of the project.

Failure to submit these acceptably completed documents will result in an administrative fee of \$100 per Calendar Day for every day that any of the required documents remain delinquent, starting 30 Calendar Days after receipt of written notification from the Engineer of a document deficiency.

D. Final Payment. Final payment is based on:

1. The agreed final quantities or as determined by the Engineer if agreement is not possible, no compensation for unauthorized work is allowed.
2. Finding of substantial completion by the Final Inspector.
3. Receipt of acceptable finalization documents.
4. Contractor certification that the Work was performed in accordance with the contract.

E. Completion of Contract and Continuation of Contractor's Responsibility. The Contract is complete, except for items covered by the required bonds, when the Contractor receives final payment. The PRC or if applicable, the CPE will issue a letter confirming completion of the contract, noting any exception as provided in Items 659 and 661 and any warranty. The date the final payment is approved by the PRC or if applicable, the CPE constitutes acceptance for the purpose of ORC 5525.16. Neither Completion of the Contract nor substantial completion relieves the Contractor of any responsibilities to properly perform or correct the Work or to repair damage or waives any remedies to which the LPA is entitled at law or in equity.

3. PN 133 – 10/20/2023 – Products Made in the United States

The requirements of this note replace the domestic material requirements in 106.09 of the Construction & Material Specifications.

This note is automatically inserted into all projects that have federal funding in the construction phase or any prior phase. If there was federal participation in environmental studies, right of way acquisition, preliminary engineering or other phase defined in the environmental document, this note should be included in the proposal.

Furnish products that are made in the United States according to the applicable provisions of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, which includes the Build America, Buy America Act Pub. L. 117-58, §§ 70901-52.

- A. Federal Requirements.** All steel or iron products incorporated permanently into the Work must be made of steel or iron produced in the United States and all subsequent manufacturing must be performed in the United States. Manufacturing is any process that modifies the chemical content; physical shape or size; or final finish of a product. Manufacturing begins with the initial melting and mixing and continues through the bending and coating stages. If a domestic product is taken out of the United States for any process, it becomes a foreign source material.

All manufactured products used in the project are not required to be produced in the United States.

All construction materials must be manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

“Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of:

- Non-ferrous metals;
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- Glass (including optic glass);
- Fiber optic cable (including drop cable);
- Optical fiber;
- Lumber;
- Engineered wood; and
- Drywall.

To provide clarity to item, product, and material manufacturers and processors, we note that items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials. For

example, a plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material.

B. Exceptions. The Director may grant specific written permission to use non-domestic steel or iron products in any type of construction in accordance with 23 CFR 635.410(b)(4). The Director may grant such exceptions under the following condition:

- The cost of products to be used does not exceed 0.1 percent of the total Contract cost, or \$2,500, whichever is greater. The cost is the value of the product as delivered to the project.

The Director may grant specific written permission to use non-domestic construction materials and manufactured products in any type of construction in accordance with 2 CFR Part 184. The Director may grant such exceptions under the following conditions:

- The total value of the non-compliant products is no more than the lesser of \$1,000,000 or 5% of total applicable costs for the project; or
 - applicable costs are defined as the cost of materials (including the cost of any manufactured products) used in the project that are subject to a domestic preference requirement
 - the actual cost of the materials, not the anticipated cost of those materials.
- The total amount of the Federal financial applied to the project, through awards or subawards, is below \$500,000;

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

C. Proof of Domestic Origin. Furnish certification to the Engineer showing the domestic origin of all products covered by this section before they are incorporated into the Work. The Daily Source Report form itself is not acceptable certification of domestic origin. Non-domestic product(s) incorporated into the Work does not relieve the Contractor of any responsibility to correct the Work up to and including removal and replacement of the non-domestic product(s). Products without a traceable domestic origin will be treated as a non-domestic product.

4. CERTIFICATION AGAINST DEBARMENT AND SUSPENSION

The bidder hereby certifies by signing this proposal that, except as noted below, under penalty of perjury and under other such penalties as the laws of this state and the United States of America provide, that the company or any person associated therewith in the capacity of owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of federal funds is **not** currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any federal agency; that the company or any person associated therewith in the

capacity of owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of federal funds has **not** been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three (3) years; that the company or any person associated therewith in the capacity of owner, partner, director, manager, auditor, or any position involving the administration of federal funds does **not** have a proposed debarment pending; that the company or any person associated therewith in the capacity of owner, partner, director, officer, principal investigator has **not** been indicted, convicted, or had a civil judgment rendered against the company or themselves by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

If there are exceptions to any of the above clauses, please include a statement with the bid package detailing these exceptions.

Exceptions will not necessarily result in denial of award but will be considered in determining bidder responsibility. For any exception noted, indicate below to whom it applies, initiating agency and dates of action. Providing false information may result in criminal prosecution or administrative sanctions. Execution of this proposal on the signature portion thereof shall also constitute signature of this certification as permitted by Title 28 United States Code, Section 1746.

5. PREQUALIFICATION

Only prequalified contractors are eligible to submit bids for this project. Prequalification status must be in force **at the time of bid, at the time of award, and through the life of the construction contract**. For work types that ODOT does not prequalify, the LPA must still select a qualified contractor. Subcontractors are not subject to the prequalification requirement. The "prime" contractor must perform no less than 30 percent of the total original contract price.

6. PN 033 - 4/18/2008- AS PER PLAN DESIGNATION

(Not required by FHWA, but strongly suggested if As Per Plan is used by the LPA)

The "As Per Plan" designation is sometimes added to item descriptions in the proposal to assist contractors with easily identifying standard items that have been altered by plan notes.

The "As Per Plan" designation has proven to be a very useful tool for the contractors. However, its use was never intended to relieve the contractors of their responsibility to read, bid, and construct all items in accordance with all governing plan notes. Therefore, the absence of an "As Per Plan" designation on some item descriptions in the proposal for which there are clear and controlling plan notes does not relieve the contractors of the responsibility to read, bid, and construct those particular items in accordance with the governing plan notes.

Be advised that the item descriptions in the bidding proposal must be read or interpreted with the governing plan notes and the Construction and Material Specification Manual. A claim based upon an "order of precedence" basis will be denied. In the event that a conflict, either real or perceived, exists between the item description and the governing plan note, the contractors are to request clarification through the pre-bid process.

7. FEDERALLY REQUIRED EQUAL EMPLOYMENT OPPORTUNITY (EEO) CERTIFICATION FORM

The bidder hereby certifies that he or she **has** ..., **has not** ..., participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that he or she **has** ..., **has not** ..., filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements. The bidder must circle the appropriate "has" or "has not" above.

8. PN 017 - 10/15/2004 - FEDERALLY REQUIRED EEO CERTIFICATION CLAUSE

The Federally Required EEO Certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7 (b) (1)) and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7 (b) (1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

9. PN 026 - 10/15/2004 - CERTIFICATION OF NON-SEGREGATED FACILITIES

A. Certification of Non-segregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities (for a Federal-aid highway construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause).

B. Bidders are cautioned as follows: By signing this bid, the bidder has agreed to the provisions of the "Certification of Non-segregated Facilities" in this proposal. This

certification provides that the bidder does not maintain or provide for his or her employees' facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the bidder will not maintain such segregated facilities.

- C. Bidders receiving Federal-aid highway construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, will be required to provide for the forwarding of the following notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

"Notice to Prospective Subcontractors and Material Suppliers of Requirement for Certification of Non-segregated Facilities" -

- A. A Certification of Non-segregated Facilities as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, which is included in the proposal, or attached hereto, must be submitted by each subcontractor and material supplier prior to the award of the subcontract or consummation of a material supply agreement if such subcontract or agreement exceeds \$10,000 and is not exempt from the provisions of the Equal Opportunity clause.
- B. Subcontractors and material suppliers are cautioned as follows: By signing the subcontract or entering into a material supply agreement, the subcontractor or material supplier will be deemed to have signed and agreed to the provisions of the "Certification of Non-segregated Facilities" in the subcontract or material supply agreement. This certification provides that the subcontractor or material supplier does not maintain or provide for his or her employees facilities which are segregated on the basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the subcontractor or material supplier will not maintain such segregated facilities.
- C. Subcontractors or material suppliers receiving subcontract awards or material supply agreements exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

10. PN 003 - 10/15/2004 - TITLE VI RELATED STATUTES NON-DISCRIMINATION STATEMENT

The LPA, under Title VI of the Civil Rights Act and related statutes, ensures that no person within the LPA shall on the grounds of race, color, national origin, sex, disability, or age be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity it administers.

11. CERTIFICATION OF COMPLIANCE WITH AFFIRMATIVE ACTION PROGRAMS

In accordance with Ohio Administrative Code §9.47, before any Contract is awarded, the LPA will require the Bidder to furnish a valid Certificate of Compliance with Affirmative Action Programs, issued by the State EEO Coordinator dated prior to the date fixed for the opening of bids.

12. PN 059 - 10/15/2004 - WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * An existing published wage determination
- * A survey underlying a wage determination
- * A Wage and Hour Division letter setting forth a position on a wage determination matter
- * A conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response for this initial contact is not satisfactory, the process described in 2.) and 3.) should be followed.

Regarding any other matter not yet ready for the formal process described within this section, initial contact should be made with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determination
Wage and Hour Division
U. S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D. C. 20210

2.) If the answer to the question in 1.) is yes, an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (see 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U. S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requester considers relevant to the issue.

- 3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U. S. Department of Labor
200 Constitution Avenue, N. W.
Washington, D. C. 20210

- 4.) All decisions by the Administrative Review Board are final.

13. PN 061 –10/22/2012- WAGE SCALE ON ALL FEDERAL-AID PROJECTS

The wage rates for this project were determined by the Secretary of Labor in accordance with Federal-Aid requirements. The LPA must formally incorporate them into the contract documents.

Contractors shall use only the classifications and wage rates set forth in the United States Department of Labor (USDOL) wage decision found at the website noted below on payrolls submitted to the ODOT District Office. Additionally, please note that the wage modification in effect at the time of the project sale date shall be used by all contractors.

This USDOL wage decision may be viewed by accessing the United States Department of Labor (USDOL) website at:

<https://sam.gov/content/wage-determinations>

This contract requires the payment of the total of the basic hourly rates plus the fringe benefits payments for each classification in accordance with the following regulations which by reference are made part of this contract:

1) The U.S. Department of Labor Regulations, Title 29, Subtitle A, Part 5, Sections 5.5, 5.31, and 5.32, most recent revision at contract execution.

2) Form FHWA-1273 (most recent revision at contract execution) Part IV. Payment of Predetermined Minimum Wage and Part V. Statements and Payrolls. (Form FHWA-1273 shall be physically incorporated in all contracts, subcontracts, and lower-tier subcontracts.)

The failure to pay prevailing wages to all laborers and mechanics employed on this project shall be considered a breach of contract. Such a failure may result in the termination of the contract and debarment.

The contractor and all subcontractors shall pay all wages and fringe benefits by company funds transfer or legal tender. All payroll records and company funds transfer transactions or legal tender transactions shall be maintained for at least three (3) years after final acceptance as defined in Section 109.12 of the ODOT C&MS. The contractor's and all subcontractor's payroll records and canceled pay checks shall be made available

for inspection by the Department and the U.S. Department of Labor, upon request, anytime during the life of the contract, and for three (3) years thereafter by the U.S. Department of Labor. Additionally, the contractor and all subcontractors shall permit such representatives to interview any employees during working hours while the employee is on the job.

The wage and fringe rates determined for this project shall be posted by the contractor in a prominent and accessible place on the project, field office, or equipment yard where they can be easily read by the workers.

The contractor and all subcontractors shall submit to the District Construction Office certified payrolls each week beginning three (3) weeks after the start of work. These payrolls shall be on a Form WH-347 or equivalent and shall show the following:

- 1) Employee name, address, classification, and hours worked.
- 2) The basic hourly and overtime rate paid, total pay, and the manner in which fringe benefit payments have been irrevocably made.
- 3) The project number and pay week dates.
- 4) Original signature of a company officer on the certification statement.

Additionally, a copy of the "Apprentice Certification" obtained from the Ohio State Apprenticeship Council must accompany all certified payrolls submitted for all apprentices working on this project.

Please be aware it is ultimately the responsibility of the contractor to ensure all laws relating to prevailing wages in the USDOL Regulations, Title 29, parts 1 and 5, are strictly adhered to by all subcontractors on the project.

If the contractor or any subcontractor fails to comply with any of the provisions contained in this proposal note, the Department may terminate the contract, debar the contractor or subcontractor, and/or withhold or suspend pay estimates after written notice and a reasonable opportunity to comply has been provided.

The applicable wage and fringe rates for this project are to be incorporated in their entirety as an attachment to the executed contract.

14. LIMITATION ON USE OF CONTRACT FUNDS FOR LOBBYING

- A. The prospective bidder certifies, by signing and submitting this bid proposal, to the best of his or her knowledge and belief that:
 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal,

amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- C. The prospective bidder also agrees by submitting his or her bid proposal that he or she shall require the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that all such subcontractors shall certify and disclose accordingly.

15. PN 045 - 10/15/2004 - NON -COLLUSION AFFIDAVIT

In accordance with Title 23 USC, Section 112 and ORC, Chapter 1331 et. seq: and Sections 2921.11 and 2921.13, the bidder hereby states, under penalty of perjury and under other such penalties as the law provides, that he/she or his/her agents or employees have not entered, either directly or indirectly, into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this proposal. Execution of this proposal on the signature portion thereof shall also constitute signature of this Non-Collusion Affidavit as permitted by title 28 USC, Section 1746.

REPORTING BID RIGGING

To report bid rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (USDOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m. eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of the USDOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the USDOT

Inspector General. All information will be treated confidentially, and caller anonymity will be respected.

16. PN 014 - 10/15/2004 - DRUG-FREE WORKPLACE

The prime contractor agrees to comply with all applicable state and federal laws regarding drug-free workplace. The prime contractor shall make a good faith effort to ensure that all its employees while working on this project will not purchase, transfer, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way.

The prime contractor shall also require this contractual obligation be placed in all subcontractor and materialman contracts it enters into and further requires all subcontractors and materialmen place the same contractual obligations in each of their lower-tier contracts.

17. PN 034 - 05/25/2011 – DRUG FREE SAFETY PROGRAM

During the life of this project, the contractor and all its subcontractors who provide labor on the project site must be enrolled in and remain in good standing in the Ohio Bureau of Worker's Compensation (OBWC) Drug-Free Safety Program (DFSP) or a comparable program approved by the OBWC.

In addition to being enrolled in and in good standing in an OBWC-approved DFSP or a comparable Drug Free Workplace Program (DFWP) approved by the OBWC, the LPA requires each contractor and subcontractor that provides labor to subject its employees who perform labor on the project site to random drug testing of five (5) percent of its employees. The random drug testing percentage must also include the on-site supervisors of the contractors and subcontractors. Upon request, the contractor and subcontractor shall provide evidence of required testing to the LPA.

Each subcontractor shall require all lower-tier subcontractors who provide labor on the project site with whom the subcontractor is in contract for the work to be enrolled in and be in good standing in the OBWC DFSP or an OBWC-approved DFWP prior to a lower-tier subcontractor providing labor at the site.

The LPA will declare a bid non-responsive and ineligible for award if the contractor is not enrolled in and in good standing in the OBWC's DFSP Discount Program or a similar program approved by the OBWC within eight (8) days of the bid opening. Furthermore, the LPA will deny all requests to sublet when the subcontractor does not comply with the provisions of this proposal note.

Failure of the contractor to require a subcontractor to be enrolled in and be in good standing in the OBWC DFSP or an OBWC-approved DFWP prior to the time the subcontractor provides labor at the site shall result in the contractor being found in breach of the contract and that breach shall be used in the responsibility analysis of that contractor or the subcontractor who was not enrolled in a program for future contracts with the State for five (5) years after the date of the breach.

18. OHIO WORKERS' COMPENSATION COVERAGE

The contractor must secure and maintain valid Ohio workers' compensation coverage until the project has been finally accepted by ODOT. A certificate of coverage evidencing valid workers' compensation coverage must be submitted to the LPA before the contract will be executed by the LPA.

The contractor must immediately notify the LPA in writing if it or any subcontractor fails or refuses to renew their workers' compensation coverage. Furthermore, the contractor must notify the LPA in writing if its or any of its subcontractor's workers' compensation policies are canceled, terminated, or lapse.

The failure to maintain valid workers' compensation coverage shall be considered a breach of contract which may result in the contractor or subcontractor being removed from the project, withholding of pay estimates, and/or termination of the contract.

19. PN 038 - 10/15/2004 - UNRESOLVED FINDING FOR RECOVERY

The contractor affirmatively represents to the LPA that it is not subject to a finding for recovery under ORC §9.24, or that it has taken the appropriate remedial steps required under §9.24 or otherwise qualifies under that section. The contractor agrees that if this representation is deemed to be false, the contract shall be void ab initio as between the parties to this contract, and any funds paid by the state hereunder shall be immediately repaid to the LPA, or an action for recovery may be immediately commenced by the LPA and/or for recovery of said funds.

20. PN 039 - 10/15/2004 - ASSIGNMENT OF ANTITRUST CLAIMS IN STATE CONTRACT LANGUAGE

The contractor should recognize that in actual economic practice, overcharges resulting from antitrust violations are usually borne by ODOT and/or the LPA. As consideration for the Award of the Contract and intent to be legally bound, the contractor acting herein by and through the person signing this contract on behalf of the contractor as a duly authorized agent, hereby assigns, sells, conveys, and transfers to ODOT and/or the LPA any and all right, title, and interest to any and all claims and causes of action the contractor now has or hereafter requires under state or federal antitrust laws provided the claims or causes of action related to the goods or services are the subject to the contract. In addition, the contractor warrants and represents that it will require all of its subcontractors and first-tier suppliers to assign all federal and state antitrust claims and causes of action to ODOT and/or the LPA. The provisions of this article shall become effective at the time the LPA executes this contract without further acknowledgment by any of the parties.

All contracting entities shall assign their rights and responsibilities to ODOT and/or the LPA for all antitrust claims and causes of action regarding subcontractors.

21. PN 024 – 04/21/2006 – US ARMY CORPS OF ENGINEERS AND OHIO ENVIRONMENTAL PROTECTION AGENCY PERMITS

The above referenced permits are incorporated and made a part of this contract as special provisions incorporated herein. Therefore, in the event the contractor or its agents refuse or fail to adhere to the requirements of the US Army Corps of Engineers 404 Permit and/or the Ohio Environmental Protection Agency's 401 Water Quality Certification and an assessment or fine is made or levied against ODOT and/or the LPA, the contractor shall reimburse the Department within thirty (30) calendar days of the notice of assessment or fine, or the Department may withhold the amount of the fine from the contractor's next pay estimate. All money collected or withheld from the contractor shall be delivered to the permitting agencies issuing the assessment or fine.

These fines are not to be construed as a penalty but are liquidated damages to recover costs assessed against the Department due to the contractor's refusal or failure to comply with the permits.

22. PN 007 – 1/31/2021- DBE TRUCKING

Title 49 CFR Section 26.55(d)(4)(5)(6) governs trucking operations.

The Disadvantaged Business Enterprise (DBE) trucking firm must be able to quote and negotiate its own prices. The DBE trucking firm must also provide a quote for each project on which the firm is to be utilized toward the project DBE goal.

The DBE will be responsible for the management and supervision of their trucking operation on each contract. A DBE is not performing a Commercially Useful Function (CUF) if the contract exists for the purpose of creating the appearance of DBE participation.

The DBE must own and operate at least one fully licensed, insured, and operational truck used on the contract.

The DBE receives credit for the total value of the transportation services the DBE provides on the contract using trucks the DBE owns, insures, and operates using drivers it employs (not 1099/independent contractors).

The DBE may lease trucks on a long-term basis (a year or more) and receive full DBE credit as long as employees of the DBE operate the truck.

A lease must indicate the DBE has exclusive use of and control over the truck, including responsibility of maintenance and insurance. This does not preclude the leased truck from working for others during the term of the lease with the DBE's consent as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the DBE's name and identification number as well.

The DBE must carry a copy of the lease agreement in the leased truck when working

onsite.

Truck Monitoring:

Credit for expenditures with DBEs for materials or supplies toward the DBE goal is described as follows:

1. A DBE firm may be a regular dealer in bulk items such as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementation of a regular dealer's own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
2. When the materials or supplies are obtained from a DBE Materials and Supplies Vendor (MSV) manufacturer the prime contractor may receive credit for 100 percent of the cost of the materials or supplies toward the DBE goal. For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
3. When the materials or supplies are purchased from a DBE MSV regular dealer or supplier, the prime contractor may receive credit for up to 60 percent of the cost of the materials or supplies toward the DBE goal. For purposes of this section, a regular dealer or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

Historically, 60% of the cost of materials and supplies purchased from a DBE MSV (100% from a DBE MSV manufacturer) would normally be counted toward DBE goals. Effective September 1, 2018:

- Prime contractors must obtain information about the method of procurement for each item to be procured from a DBE MSV. The DBE Affirmation Form has been modified to accommodate this information.
- To be eligible to receive 100% credit toward DBE goals for a materials and supplies subcontract:
 - The DBE MSV must be certified with the correct (manufacturer) NAICS code for the item
 - The DBE MSV must be certified with the correct descriptor for the item

- The role the DBE MSV will play on the specific procurement in question must be consistent with the manufacture of the item, as indicated by the information provided by the DBE MSV
- To be eligible to receive 60% credit toward DBE goals for a materials and supplies subcontract:
 - The DBE MSV must be certified with the correct (wholesale or retail) NAICS code for the item
 - The DBE MSV must be certified with the correct descriptor for the item
 - The role the DBE MSV will play on the specific procurement in question must be consistent with the regular sale or lease of the item, as indicated by the information provided by the DBE MSV
 - The item must not be drop-shipped
- The above scenario applies to both bulk items (petroleum products, steel, cement, gravel, stone, asphalt, and others that ODOT may consider to be bulk items) and non-bulk items. For bulk items, there is an additional scenario whereby a contract with a DBE MSV could receive 60% credit. To be eligible to receive 60% credit toward DBE goals for a bulk item materials and supplies subcontract:
 - The DBE MSV must be certified with the correct (wholesale or retail and trucking) NAICS codes for the item
 - The DBE MSV must be certified with the correct descriptor for the item
 - The role the DBE MSV will play on the specific procurement in question must be consistent with the regular sale or lease of the item, as indicated by the information provided by the DBE MSV
 - The DBE MSV must deliver the bulk item from a non-DBE vendor to the prime contractor using distribution equipment that it both owns [or for which it has a long-term (1 year or more) lease] and operates with its regular (not ad hoc) employees
- If not eligible for 100% or 60% credit, an item may still be eligible for credit toward DBE goals, but only for the fee or commission the DBE MSV receives for its services, and only if the following additional criteria are met:
 - The DBE MSV must be certified with NAICS code 425120 Wholesale Trade Agents and Brokers
 - The DBE MSV must convincingly explain how the prime contractor benefits by transacting business with it rather than directly with the non-DBE vendor from which the DBE MSV is re-selling
- The usual good faith efforts process applies.
- All credit toward DBE goals is conditional. Actual credit will be determined based upon invoices, receipts, and/or transportation documents/bills of lading, which must be submitted to ODOT as they are received throughout the course of the project.

DBE TRUCKING DISCLOSURE AFFIDAVIT

In order to ensure the prime contractors are monitoring DBE trucking/hauling operations on projects with federal funding, prime contractors must complete the DBE Trucking Disclosure Affidavits Section ("Affidavit") when completing and submitting the Prompt Payment Spreadsheet for reimbursement. The Affidavit will be completed by the prime contractor on the Prompt Payment Spreadsheet and, once submitted, will be routed to the project's SharePoint site. This information will be used to affirm DBE and non-DBE trucking utilized by each DBE firm performing those duties during the previous month. The LPA and ODOT will monitor trucking with the following requirements for all Local-let projects:

- Prime contractors will be required to provide a master list of all anticipated DBE trucking firms to the District Construction Monitor (DCM) at the time of the Pre-Construction Meeting.
 - If no DBE trucking is anticipated on a project, the prime contractor will check the box "No Anticipated DBE Trucking Affidavit" on the first submittal of the Prompt Payment Spreadsheet. If DBE trucking/hauling does occur, the prime contractor must notify the LPA within seven (7) days of the DBE trucking activity. The prime contractor will then complete the Affidavits as required below on each Prompt Payment Spreadsheet.
- Prime contractors will be required to complete the Affidavit disclosing the DBE trucking operations during the previous month when completing the new Prompt Payment Spreadsheet. The prime contractor will complete the Trucking Affidavit section on the Prompt Payment Spreadsheet on each reimbursement submittal. The prime contractor will select one of the following options on the Trucking Affidavit section of the form.
 - The DBE firm performed trucking by utilizing their own equipment and workforce and/or work was subcontracted to another DBE (i.e., only trucking that can be counted for DBE participation was utilized).
 - No other information is required. The prime contractor will sign and submit the Affidavit.
 - The DBE firm utilized DBE & Non-DBE trucking.
 - If selected, the prime contractor will provide a list of non-DBE trucking that was utilized (i.e., not all trucking will earn DBE credit).
 - No trucking was performed.
 - No other information is required. The prime contractor will sign and submit the Affidavit.
- The DCM will perform a check of the Affidavit when reviewing the Prompt Payment Spreadsheet when submitted for reimbursement. The LPA and/or Compliance Managers will follow up on any red flags. For example, if the LPA compares information collected during the CUF process with the affidavit and sees any

discrepancies. (Prompt Payment, DBE Tracking and CUF | Ohio Department of Transportation)

- Trucking will continue to be monitored at project sites by construction field staff and the LPAs.

SANCTIONS AND ADMINISTRATIVE REMEDIES

Failure by the prime contractor to follow the DBE Trucking Disclosure Affidavit requirements may result in the issuance of sanctions as follows:

- 1st Level Occurrence: The Department will issue a Letter of Reprimand to the contractor (applies if there is a failure to submit the Affidavits and/or the Affidavits are not submitted timely; if the prime contractor completes the No Anticipated DBE Trucking Affidavit, utilizes DBE trucking, and does not notify the LPA within seven (7) days of the activity).
- 2nd Level Occurrence: The Department may withhold an estimate in the amount due to the DBE trucking firm the Affidavit was not submitted for (applies if there is a failure to submit the Affidavits and/or the Affidavits are not submitted timely; if the prime contractor completes the No Anticipated DBE Trucking Affidavit, utilizes DBE trucking and does not notify the LPA within seven (7) days of the activity).
- 3rd Level Occurrence: If a pattern of not submitting the Affidavit(s) persists or the contractor has falsified, misrepresented, or withheld information; ODOT can pursue other remedies available by law including suspension, revocation, and/or debarment.

Factors to be considered in issuing sanctions may include, but are not limited to the following:

- The contractor's past project practices,
- The magnitude and the type of offense,
- The degree of the contractor's culpability,
- Any steps taken to rectify,
- The contractor's record of performance on other projects, and
- The number of times the contractor has been previously sanctioned by ODOT.

DBE MSV DIRECTORY - <http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/DBE-Directory.aspx> (select MSV only)

DBE AFFIRMATION FORM - The new DBE Affirmation Form is now available at DBE Affirmation Form - Projects Sold on or after 9/1/18 | Ohio Department of Transportation.

Opening Prompt Payment (PP) Spreadsheet (Trucking Affidavit Section on PP Spreadsheet) through GoFormz:

1. Obtain a MyODOT account
 - a. Click [Link](#)
 - b. Click "Launch MyODOT"
 - c. Click: "Click Here"
 - d. Complete Account Application under "Request an Account"
2. Getting GoFormz Access
 - a. Email GoFormz.Help@dot.ohio.gov put Create GoFormz Account in the subject line
 - b. Login for GoFormz will be emailed back
 - c. Click www.goformz.com

Additional guidance can be found by [Clicking Here](#)

23. PN 013 – 10/20/23 DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION PLAN AND GOOD FAITH EFFORTS – LPA Projects

DEFINITION OF DAYS

Unless otherwise noted, *days* means calendar days, but in computing any period of time described in this proposal note, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal or State holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal or State holiday. See <https://www.opm.gov/policy-data-oversight/pay-leave/federal-holidays> for a list of Federal holidays. State holidays are those designated in division (A) of section 124.19 of the Revised Code (<https://codes.ohio.gov/ohio-revised-code/section-124.19>), with modifications as designated in the first two sentences of division (B)(4) of section 124.18 of the Revised Code (<https://codes.ohio.gov/ohio-revised-code/section-124.18>). (State holidays are generally the same as Federal holidays.)

DBE UTILIZATION PLAN

The bidder's DBE Utilization Plan **must be submitted by the bidder prior to bid opening at https://odot.formstack.com/forms/dbe_copy**. By submitting a DBE Utilization Plan, the Bidder affirms it will be using the DBE firms identified in the Utilization Plan to meet the DBE contract goal. The Bidder further affirms it will not deviate from the Utilization Plan without ODOT's prior written consent.

Unless the bidder is a certified DBE firm, **a bid opened without a DBE Utilization Plan submitted prior to bid opening will be deemed unresponsive.**

The DBE Utilization Plan shall include the following information:

1. The names of the certified DBE firms(s) that will be used to meet the DBE goal
2. A description of the work each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract
3. Whether the DBE firms(s) being used to meet the goal will be utilized as a subcontractor, regular dealer, manufacturer, consultant, or other capacity
4. The dollar amount of the participation of each DBE firm used to meet the DBE goal.

PROJECTS AWARDED ON ALTERNATES

In the event the project is awarded on alternates, which increases or decreases the total dollar amount of the bid, a revision to the DBE Utilization Plan and DBE Affirmation Form(s) shall be submitted and approved by the Office of Business & Economic Opportunity within five (5) days after the notification of the alternates.

DBE AFFIRMATION

The Apparent Low Bidder (ALB) shall ensure the DBE firms being utilized to meet the DBE goal affirm their participation in the bid within five (5) days after the bid opening to ODOT. The contract dollar amount(s) and/or DBE firm(s) included in the ALB's DBE Utilization Plan must match the contract dollar amount(s) and/or DBE firm(s) included on the DBE Affirmation Form(s). If the contract dollar amount(s) and/or DBE firm(s) do not match, the ALB shall utilize the Request for Consent to Terminate/Reduce a DBE Commitment form located at DBE Commitment Reduction or Termination Form | Ohio Department of Transportation and submit for review and approval by the Office of Business & Economic Opportunity within five (5) days of the bid opening.

The ALB shall utilize the DBE Affirmation Form located at DBE Affirmation Form - Projects Sold on or after 9/1/18 | Ohio Department of Transportation. The DBE Affirmation Form will be utilized as written confirmation from each listed DBE firm that it is participating in the contract in the type and amount of work provided in the bidder's DBE Utilization Plan. The ALB shall submit a separate DBE Affirmation Form for each DBE it is utilizing for the DBE goal as well as their Good Faith Efforts package if they were not able to attain the DBE Goal via DBE participation.

All other bidders shall submit a DBE Affirmation Form(s) if notified the information is required in order for ODOT to complete its assessment. Bidders shall have five (5) days from the date of notification to submit all required DBE Affirmation Forms to ODOT. Notification will be by email.

In the event a DBE firm fails to confirm the information contained in the DBE Affirmation Form within five (5) days of bid opening, the ALB shall submit a Request for Consent to Terminate/Reduce a DBE Commitment form, as set forth herein. The Request for Consent to Terminate/Reduce a DBE Commitment form shall be submitted within five (5) days after bid opening in order for the ALB to still be considered for contract award. The ALB shall include as its reason for termination the DBE firm's failure to provide a timely affirmation and should include all efforts the ALB made to obtain the affirmation from the DBE firm and shall attach proof of these efforts, if available. If the ALB intends to replace the DBE Firm, it shall include the replacement firm's information on the form. In the event the ALB is unable to affirm a DBE firm included in its original DBE Utilization Plan at bid submission and it results in a goal shortfall, Good Faith Efforts (GFE's) must be submitted by the fifth day after bid opening. All GFE documentation submitted for consideration should demonstrate the efforts the bidder made prior to the time of bid submission to secure sufficient DBE participation on the project to meet the DBE goal although the bidder was unable to do so. A DBE firm's failure to timely confirm information contained in the DBE

Affirmation Form will be considered as good cause to terminate the DBE firm and will also be considered a part of the ALB's Good Faith Efforts in meeting the goal.

DBE BIDDERS

In the event the Bidder is a certified DBE firm, the Bidder is not required to complete a DBE Utilization Plan as set forth above and would not need to submit a DBE Affirmation Form for the work it is planning to self-perform in order to meet the goal.

JOINT VENTURES

If the bidder is a Joint Venture, the Joint Venture will only be considered a Certified DBE firm if the Joint Venture itself has been certified. The Joint Venture may, however, utilize a Certified DBE firm that is also a partner in the Joint Venture as part of its DBE Utilization Plan. The Certified DBE Firm/Joint Venture Partner, however, does not need to submit a DBE Affirmation Form for any work the Certified DBE Firm/Joint Venture Partner is going to perform to meet the goal. ODOT will consider submission of the Joint Venture's bid as the Certified DBE Firm/Joint Venture Partner's confirmation that it is participating in the contract.

GOOD FAITH EFFORTS (GFE's)

If the DBE contract goal established by ODOT is not met, the ALB shall demonstrate it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.

If the ALB does not meet the goal at bid time, the ALB shall submit its Good Faith Efforts (GFE's) documentation within five (5) days of the bid opening. Submission of DBE affirmation(s) with additional participation sufficient to meet the DBE contract goal does not cure the ALB's failure to meet the goal at bid time or eliminate the ALB's responsibility of submitting GFE's within five (5) days of the bid opening.

The ALB shall demonstrate its GFE's by submitting the following information within five (5) days after the bid opening:

1. All written quotes received from certified DBE firms
2. All written (including email) communications between the ALB and DBE firms
3. All written solicitations to DBE firms, even if unsuccessful
4. Copies of each non-DBE quote when a non-DBE was selected over a DBE for work on the contract
5. Phone logs of communications with DBE firms

The ALB shall utilize the Pre-Bid GFE Template to document their GFE's. This template and supporting documentation shall be sent along with any DBE Affirmation Forms within five (5) days of bid opening. ODOT has provided Good Faith Efforts Guidance located at [Good Faith Efforts \(GFE\) for Contractors | Ohio Department of Transportation](#)

All other bidders shall submit documentation of GFE's if notified the information is required in order for ODOT to complete its bid assessment. Bidders shall have five (5) days from the date of notification to submit all required GFE documentation. Notification will be by email.

ODOT shall utilize the guidance set forth in 49 CFR §26.53 Appendix A in determining whether the bidder has made adequate good faith efforts to meet the goal.

ADMINISTRATIVE RECONSIDERATION

ODOT will review the GFE documentation and issue a written determination on whether adequate GFE's have been demonstrated prior to contract award. If ODOT determines the ALB has failed to demonstrate adequate GFE's to meet the goal, the ALB will have an opportunity for administrative reconsideration prior to the contract being awarded.

As part of this reconsideration, the ALB may provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. Such written documentation or argument must be provided to ODOT, attention to the Office of Chief Legal Counsel, 1980 West Broad Street, MS 1500, Columbus, Ohio 43223 (with copy to the Office of Contract Sales, MS 4110), within two (2) business days of ODOT's written determination that GFE's were not adequately demonstrated. The ALB may also include in their written documentation a request for an in-person meeting to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. ODOT's Office of Chief Legal Counsel will respond to the ALB within five (5) business days of receiving written documentation or holding the in-person meeting.

ODOT will send the ALB a written decision on reconsideration explaining the basis for finding that the ALB did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the United States Department of Transportation.

TERMINATION OR REPLACEMENT OF A DBE

By submitting a DBE Utilization Plan, the bidder is committing to use the DBE firms identified in the plan. The ALB/Awarded Contractor shall utilize the specific DBEs listed in the DBE Utilization Plan to perform the work and supply the materials for which each is listed unless the ALB/Awarded Contractor obtains written consent as provided in this paragraph. In order to request termination or substitution of a DBE firm, the ALB/Awarded Contractor shall utilize the Request for Consent to Terminate/Reduce a DBE Commitment form located at [DBE Commitment Reduction or Termination Form | Ohio Department of Transportation](#).

This termination/replacement procedure applies only to DBE firms, or the amount of work being utilized to meet the goal.

Without ODOT's written consent to terminate/replace a DBE firm being utilized to meet the goal, the Awarded Contractor shall not be entitled to any payment for DBE listed work or material unless it is performed or supplied by the listed DBE.

GOOD CAUSE

ODOT may provide written consent to terminate a DBE only if it agrees, for reasons stated in a concurrence document, the ALB/Awarded Contractor has good cause to terminate the DBE firm.

For purposes of this section, good cause to terminate a DBE includes the following circumstances:

- 1) The listed DBE firm fails or refuses to provide the required DBE Affirmation Form or to execute a written contract
- 2) The listed DBE firm fails or refuses to perform the work of its subcontract in a manner consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE firm to perform its work on the subcontract results from the bad faith or discriminatory action of the awarded contractor
- 3) The listed DBE firm fails or refuses to meet the awarded contractor's reasonable, nondiscriminatory bond requirements.
- 4) The listed DBE firm becomes bankrupt, insolvent, or exhibits credit unworthiness
- 5) The listed DBE firm is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1200 or applicable state law
- 6) ODOT has determined the listed DBE firm is not a responsible contractor
- 7) The listed DBE firm voluntarily withdraws from the project and provides to the contractor written notice of its withdrawal
- 8) The listed DBE is ineligible to receive DBE credit for the type of work required
- 9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract; and
- 10) Other documented good cause that ODOT determines compels the termination of the DBE firm. Provided that good cause does not exist if the awarded contractor seeks to terminate a DBE it relied upon to obtain the contract so the awarded contractor can self-perform the work for which the DBE contractor was engaged or so the awarded contractor can substitute another DBE or non-DBE contractor after contract award.

REPLACEMENT

When a DBE firm is terminated or fails to complete its work on the contract for any reason, the Awarded Contractor must make GFEs to find another DBE firm to replace the original DBE. These GFEs shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal. The GFEs shall be documented by the Awarded Contractor. If ODOT requests documentation under this provision, the Awarded Contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days, if necessary, at the request of the contractor, and ODOT shall provide a written determination to the contractor stating whether GFEs have been demonstrated.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions and substitutions of DBE firms put forward by bidders in the DBE Utilization Plan.

ADDITION

In the event additional DBE participation is required for the project, the Awarded Contractor shall utilize the DBE Affirmation Form located at DBE Affirmation Form - Projects Sold on or after 9/1/18 | Ohio Department of Transportation. The DBE Affirmation Form will be utilized as written confirmation from each DBE firm that is participating in the contract in the kind and amount of work on the project.

WRITTEN NOTICE TO DBE

Before transmitting to ODOT its request to terminate and/or substitute a DBE firm, the ALB/Awarded Contractor must give notice in writing to the DBE firm with a copy to ODOT of its intent to request to terminate and/or substitute and the reason(s) for the request.

The ALB/Awarded Contractor must give the DBE five (5) days to respond to the notice, advising ODOT and the ALB/Awarded Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why ODOT should not approve the ALB/Awarded Contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), ODOT may provide a response period shorter than five (5) days.

GOAL ATTAINMENT POST AWARD

The Awarded Contractor shall make available upon request a copy of all DBE subcontracts. The Awarded Contractor shall ensure that all subcontracts or agreements with DBEs require that the subcontract and all lower-tier subcontracts be performed in accordance with this Proposal Note.

Approval of a DBE Utilization Plan does not ensure approval of C-92 Requests to Sublet, nor does approval of a DBE Utilization Plan indicate the DBE goal has been met. ODOT will monitor goal attainment throughout the life of the project. It is the responsibility of the Awarded Contractor to advise ODOT of any changes to the DBE Utilization plan throughout the life of the project. The DBE goal of a project is stated as a percentage of the contract. In the event the contract amount increases or decreases, the actual dollar amount of the DBE goal for the project may increase or decrease accordingly.

SANCTIONS AND ADMINISTRATIVE REMEDIES

PRE-BID

Failure by the ALB to do any of the following shall result in the bid being rejected as non-responsive in accordance with ORC §5525.08:

1. Failure to submit a complete DBE Utilization Plan at the time of bid
2. Failure to submit DBE Affirmation Form(s) and/or failure to submit Request for Consent to Terminate/Reduce a DBE Commitment form(s) as required by this Proposal Note; or
3. Failure to meet the goal and/or failure to demonstrate GFEs to meet the goal as required by this Proposal Note.

POST-BID

Failure by the Awarded Contractor to carry out the requirements of this Proposal Note, including the submission of adequate good faith efforts to meet the goal for a project, is a material breach of the contract and may result in the issuance of sanctions as follows:

1st Tier: Letter of Reprimand

2nd Tier: Damages equivalent to the DBE shortfall

3rd Tier: If a pattern of paying damages persists or the contractor has falsified, misrepresented, or withheld information, ODOT can pursue other remedies available by law including suspension, revocation, and/or debarment.

Factors to be considered in issuing sanctions may include, but are not limited to, the following:

- the magnitude and the type of offense
- the degree of the contractor's culpability
- any steps taken to rectify
- the contractor's record of performance on other projects including, but not limited to:
 - annual DBE participation
 - annual DBE participation on projects without goals
 - the number of complaints ODOT has received regarding the contractor
 - the number of times the contractor has been previously sanctioned by ODOT

24. PN 031 - 6/27/2023 – PROMPT PAYMENT - LOCAL-LET CONSTRUCTION PROJECTS

The U.S. Department of Transportation's (USDOT's) rules related to Disadvantaged Business Enterprises are published in 49 CFR Part 26. Within 49 CFR Part 26, 49 CFR 26.29 lays out the prompt payment requirements that apply to ODOT (the Department), its subrecipients (LPA's), and, by extension, both prime contractors and subcontractors (including non-DBEs). The 49 CFR 26.29 requirements apply only to federally funded contracts (i.e., contracts with DOT financial assistance). The prime contractor must comply with this Proposal Note and the Department's prompt payment requirements as published in 107.21 of the C&MS.

Second-tier subcontract means a subcontract awarded directly by the subcontractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a contractor's general and administrative expenses or indirect costs.

The Department will monitor payments made by prime contractors and subcontractors for compliance with this Proposal Note, C&MS 107.21 and, where applicable, 49 CFR 26.29. To facilitate this monitoring, the Department requires both prime **and** subcontractors to report their payments to all subcontractors/second-tier subcontractors with the submission of each invoice. The payment data reported must include any retainage withheld (when

allowable under the Department's Retainage Policy dated 4/14/21) and any previously withheld retainage released. All such reporting must take place through a web-based submission on GoFormz. Please note: submission through GoFormz is required for all Local-let projects. Invoices will not be approved and processed for payment unless this reporting form has been submitted and received by the Department.

The prime/subcontractor must report the following information:

- The name of the payee
- The dollar amount of the payment to the payee
- The date the payee was paid
- The amount of retainage withheld (if any)

Ohio's 10-day prompt payment requirement is based on the payer's payment issuance date and NOT the payee's payment receipt date.

The prime/subcontractor must sign each reported payment and submit it to ODOT via the GoFormz website.

The second-tier subcontractor is responsible for completing the affirmation of payment form in GoFormz.

The prime is responsible for ensuring that all subcontractors and second-tier subcontractors are correctly completing all prompt payment forms via the GoFormz website.

If the prime or subcontractor(s) fail to submit the aforementioned documentation with each invoice, they will be determined to be non-compliant and invoices will not be processed for payment.

Payees must verify each payment reported by the payer within thirty (30) days of the payment being signed by the payer. This verification must include:

- Whether the payment was received, and if so, whether it was or was not as expected
- The dollar amount of the payment received
- The date the payment was received

The prime contractor shall fully complete the last prompt payment form upon receipt of final payment.

SANCTIONS AND ADMINISTRATIVE REMEDIES

Failure by the prime contractor and/or subcontractor(s) to follow Prompt Payment requirements may result in the issuance of sanctions as follows:

1st Tier: Notice of Violation followed by a Letter of Reprimand

2nd Tier: If corrective actions are not taken within the specified three (3) business days, a pay estimate in the amount due to the subcontractor(s) that was not reported or paid may be withheld.

3rd Tier: If a pattern of paying damages persists or the contractor has falsified, misrepresented, or withheld information, ODOT can pursue other remedies available by law including suspension, revocation, and/or debarment.

Factors to be considered in issuing sanctions may include, but are not limited to the following:

- the magnitude and the type of offense
- the degree of the contractor's culpability
- any steps taken to rectify
- the contractor's record of performance on other projects
- the number of times the contractor has been previously sanctioned by ODOT

25. WAIVER OF C&MS 614.03

ODOT's 2023 C&MS section 614.03, third paragraph, does not apply to any project which is not physically located on the National Highway System (NHS), and/or does not impact NHS traffic in any way.

26. ODOT AS OBLIGEE ON BOND

The contractor shall furnish a performance and payment bond in an amount at least equal to 100 percent of the estimate as security for the faithful performance of its contract. In addition to the project owner, ODOT shall be named as an obligee.

27. NON-DISCRIMINATION PROVISIONS

A. Compliance with Regulations: The contractor will comply with the regulations relative to nondiscrimination in Federally assisted programs of the USDOT Title 49 CFR, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

In addition, the contractor will comply with the provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FHWA Guidance, and any other Federal, State, and/or local laws, rules and/or regulations (hereinafter referred to as "ADA/504").

B. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, or disability, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate, either directly or

indirectly, in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.

C. Solicitations for Contractors or Subcontractors, including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a contract or subcontract including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

D. Information and Reports: The contractor will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State or FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of the contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor will so certify to the State or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the LPA will impose such contract sanctions as it or State/FHWA may determine to be appropriate, including, but not limited to:

- (1) Withholding of payments to the contractor under the contract until the contractor complies, and/or
- (2) Cancellation, termination, or suspension of the contract, in whole or in part.

F. Incorporation of Provisions: The contractor will include the provisions of paragraphs (A) through (E) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor will take such action with respect to any subcontractor procurement as the LPA or State/FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the LPA/State to enter into such litigation to protect the interests of the LPA and the State. In addition, the LPA/State may request the United States to enter into such litigation to protect the interests of the United States.

28. PN 015 - 04/17/2020 - CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS

The required contract provisions for federal-aid construction contracts are hereby incorporated by reference as if rewritten herein. The current version of Form FHWA-1273 (available at <https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>) shall be physically incorporated in all contracts, subcontracts, and lower-tier subcontracts

(excluding purchase orders, rental agreements and other agreement for supplies or services related to a construction contract). The prime contractor shall be responsible for ensuring that the FHWA-1273 is physically incorporated into all lower-tier subcontracts.

SANCTIONS AND ADMINISTRATIVE REMEDIES

Failure by the prime contractor to include the provisions of FHWA-1273 in their contract or in their lower-tier subcontracts may result in the issuance of sanctions as follows:

1st Tier: Letter of Reprimand

2nd Tier: Damages equivalent to the daily liquidated damages amount found in section 108.07 for each incident of non-compliance

3rd Tier: If a pattern of paying damages persists or the contractor has falsified, misrepresented, or withheld information, the LPA can pursue other remedies available by law including suspension, revocation, and/or debarment.

Factors to be considered in issuing sanctions may include, but are not limited to the following:

- the magnitude and the type of offense
- the degree of the contractor's culpability
- any steps taken to rectify
- the contractor's record of performance on other projects; and
- the number of times the contractor has been previously sanctioned by the LPA.

29. PN 032 – 01/31/2021 – C92s REQUIRED ON LOCAL-LET CONSTRUCTION PROJECTS

State and Federal law requires that all contractors and subcontractors participating in state or federally funded projects be evidenced in writing and in conformity with all applicable state and federal laws and regulations.

Effective immediately, all projects advertising after 2/1/2021 will require that a Request to Sublet (C92) form is completed for each subcontractor and DBE materials supplier working on the project prior to the start of work.

A template for this form may be found and submitted via the GoFormz website located at www.goformz.com.

30. REQUIRED CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS (Electronic Form FHWA 1273 – October 23, 2023) (SEE NEXT PAGE)

FHWA-1273 – Revised October 23, 2023

III. SCOPE OF WORK

1. GENERALLY

The Contractor shall furnish, at its own cost and expense, all management, labor, tools, forms, equipment, appliances, machinery, transportation, materials and other things necessary, of whatever nature, to perform the Work, and shall perform and complete, within the time limit specified, all of the Work indicated or implied by the Notice to Bidders, Instructions to Bidders, General & Supplemental Provisions, Standard Specifications, Scope of Work, Plans & Specifications, and Estimated Quantities prepared for this Project, including the removal of surplus or condemned materials, and the thorough cleaning of the site of the Work and structures built.

In no case will any Work, in excess of such requirements, be paid for unless ordered in writing by the County Engineer as hereinafter specified.

All Work shall be of the best quality throughout. Unless otherwise provided herein, all materials shall be new.

2. SCHEDULE OF PERFORMANCE

At the pre-construction meeting, the Contractor must provide the Engineer with a printed schedule showing the interrelation and planned performance of all major items of Work, with completion reasonably scheduled thereon to occur by the scheduled completion date recited herein. The Engineer shall review and consider acceptance of the schedule as provided by section 108.02 (B) (1) of the Standard Specifications.

I. General

The progress schedule required for this project is the simple bar chart type as described in Section II of this note. Prepare and submit a progress schedule to the DCE for review at or before the pre-construction conference. The Engineer will review the schedule and within 14 calendar days of receipt will either accept the schedule or provide the Contractor with comments. Acceptance of the schedule does not revise the Contract Documents. Provide clarification or any additional information needed within 10 days of a written request by the Engineer. The Department will withhold Estimates until the Engineer accepts the schedule. The Engineer will not measure or pay for the preparation of the schedule and schedule updates directly, but the cost of preparing and updating the schedule is incidental to all Contract Items. The requirements of this note are in addition to progress schedule requirements in 108.02 of the Construction & Material Specifications.

II. Schedule Requirements

Include the following Administrative Identifier Information:

1. Project Number
2. County
3. Route Number
4. FHWA Number
5. PID Number
6. Contract Number
7. Date of Contract
8. Completion Date
9. Contractor's Name
10. Contractor's Dated Signature
11. ODOT's Dated Acceptance Signature

Provide a working day schedule that shows the various activities of Work in sufficient detail to demonstrate a reasonable and workable plan to complete the Project by the Completion Date. Show the order and the sequence for accomplishing the Work. Describe all activities in sufficient detail so that the Engineer can readily identify the Work and measure the progress of each activity. The bar chart schedule must reflect the scope of work, required phasing, maintenance of traffic requirements, interim completion dates, the Completion Date, and other project milestones established in the Contract Documents. Include activities for submittals, working and shop drawing preparation, submittal review time for the Department, material procurement and fabrication, and the delivery of materials, plant and equipment, and other similar activities. The schedule must be detailed on letter or legal sized paper.

Activity requirements are discussed in further detail as follows.

1. Activity Description

Assign each activity an unambiguous descriptive word or phrase. For example, use "Excavate Area A", not "Start Excavation".

2. Activity Original Duration

Indicate a planned duration in calendar days for each activity. Do not exceed a duration of 20 working days for any activity unless approved by the Engineer. Do not represent the maintenance of traffic, erosion control, and other similar items as single activities extending to the Completion Date. Break these Contract Items into component activities in order to meet the duration requirements of this paragraph.

III. Updated Progress Schedule

Submit an updated progress schedule when ordered by the Engineer. The Engineer may request an updated progress schedule when progress on the work has fallen more than 14 calendar days behind the latest accepted progress schedule. Information in the updated schedule must include a "% work completed" value for each activity.

IV. Recovery Schedule

If the progress schedule projects a finish date for the Project more than 14 calendar days later than the Completion Date, submit a revised schedule showing a plan to finish by the Completion Date. The Department will withhold Estimates until the Engineer accepts the revised schedule. The Engineer will use the schedule to evaluate time extensions and associated costs requested by the Contractor.

IV. PLANS & SPECIFICATIONS

1. GENERALLY

The Plans and Specifications are intended to explain and supplement each other, and to indicate and provide for the construction of the various related parts of the Project in a complete and connected manner. Should any detail be omitted, any discrepancies or errors appear, or misunderstandings arise, in or with respect to such Plans and Specifications, the additions, corrections, or explanations necessary to provide for the construction in accordance with such intent shall be made by the Engineer, and such additions, corrections and explanations shall be final and binding upon the Contractor, subject to dispute resolution.

2. "OR EQUAL"

Whenever an article, material or equipment is defined herein by describing a proprietary product, or by using the name of manufacturer or vendor, the term "or equal", if not inserted, shall be implied. The specific article, material or equipment mentioned, shall be understood as indicating the type, function, minimum standard of design, efficiency and quality desires and shall not be construed in such a manner as to exclude manufacturer's products of comparable quality, design and efficiency. The Contractor shall comply with the requirements of the contract documents, relative to the approval of materials and equipment by the County, before the same are incorporated in the Work.

Special Note: Disadvantaged Business Enterprise (DBE) Requirement. DBE participation goals (subcontracts, materials, supplies) have been set on this project for those certified as DBE's pursuant to Title 23, U.S.C. section 140(c) and 49 CFR, Part 26, and where applicable qualified to bid with ODOT under chapter 5525 of the ORC.

V. PROPOSAL FORMS

BIDDER QUALIFICATIONS

Bidders must be pre-qualified as required by item I. (4) of the Instructions to Bidders.

In addition, each Bidder shall provide the Bidder Qualification information required by the following form. In lieu of completing the attached tables, a Bidder may attach hereto a listing of the required information, with the word "attached" printed in affected table.

Do you intend to sublet any portions of the work? ____ If so, please complete the following:

NAME OF SUBCONTRACTOR	AMOUNT OF SUBCONTRACT	ITEMS OF WORK

List below any equipment you own, which is available for the proposed work.

Quantity	Item	Description, Size, Capacity, Etc.	Condition	Years of Service	Present Location

List equipment which you intend to purchase or rent for use on the proposed Work.

Quantity	Item	Description, Size, Capacity, Etc.	Purchase or Rent	Approx. Cost

List all incomplete Contracts and Subcontracts on hand:

Date	Owner and Location	Value of Contract	Type of Work	Required Date of Completion

(Use back of sheet if necessary.)

List projects of this type of work you have completed in this County in the past three years.

Owner and Location	Amount of Contract	Type of Work Done	Date

List the largest performance bonds you have obtained in the past three years.

Date	Owner and Location	Amount of Bond	Type of Work Done	Required Date of Completion

Are there any outstanding liens against you or your projects? _____

If answer is yes to any of the above, please furnish details. (If there is insufficient space on this page, attach additional sheets.)

AFFIRMATION OF BIDDER QUALIFICATIONS FORM

I, the undersigned, hereby affirm that I am an officer or sole proprietor of the Bidder identified below, that I am duly authorized by said Bidder to execute this document, and that the answers given on the Bidder Qualifications forms are complete and true.

Signed this _____ day of _____, 20____.

Bidder:_____

(Signed)_____

Printed Name:_____

Title:_____

EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS FOR SERVICE AND SUPPLY CONTRACTS

EQUAL OPPORTUNITY COMPLIANCE CERTIFICATE

As used in the Certificate, the terms "contract" and "subcontract" includes the term "Purchase Order" and all other agreements effectuating purchase of supplies or services.

This Certificate shall be renewed annually. Notwithstanding the foregoing, the certifications made herein shall remain applicable until completion of all non-exempt contracts/subcontracts awarded while this Certificate is in effect. The undersigned Bidder certifies the following to the County:

A. **REPORTS:** Within thirty (30) days after the County's award to the Bidder of any contract, and prior to each March 31 thereafter, during the performance of work under said contract, the Bidder shall file Standard Form 100, entitled "Equal Employment Opportunity Employer Identification Report EEO-1" in accordance with instructions contained therein, unless the Bidder has either filed such report with the County within twelve (12) months preceding the date of the award or is not otherwise required by law or regulations to file such a report.

B. **PRIOR REPORTS:** The Bidder, if it has participated in a previous contract or subcontract subject to the Equal Employment Opportunity Clause 41 C.F.R. Sec. 60-1.4 (a) (1) through (7), or the clause originally contained in Section 301 or Executive Order No. 10925, or the clause contained in Section 201 if the Executive Order No. 11114, has filed all required compliance reports. The Bidder shall obtain similar representations indicating submission of all required compliance reports, signed by proposed subcontractors, prior to awarding subcontracts not otherwise exempt from the Equal Employment Opportunity clause.

C. **CERTIFICATION OF NON-SEGREGATED FACILITIES:** The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments and that it will not permit its employees to perform their services at any location under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Employment Opportunity Clause in this Certificate. As used in the certification, the term "segregated facilities" means any waiting rooms, rest rooms, and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or natural origin, because of habit, local customs or otherwise. The Bidder further agrees that (except where it has obtained certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to award of any subcontracts exceeding \$10,000.00 which are not exempt from the provisions of the Equal Employment Opportunity Clause; that it will retain such certifications in its files; and that it will forward

the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to Prospective Subcontractors of Requirement for Certification of Non-segregated Facilities: A Certification of Non-segregated Facilities, as required by Section 60-1.8 of Title 41 of the Code of Federal Regulations, must be submitted prior to the award of a subcontract exceeding \$10,000.00 which is not otherwise exempt from the provisions of the Equal Employment Opportunity Clause.

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

D. AFFIRMATIVE ACTION COMPLIANCE PROGRAM: Prior to 120 days after receipt of any contract in the amount of \$50,000.00 or more from the County, Bidder, if it has fifty (50) or more employees and is not otherwise exempt under 41 C.F.R., Part 60-1, shall have developed for each of his establishments a written affirmative action compliance program as called for in 41 C.F.R., Sec. 60-1.40. Bidder will also require its lower-tier subcontractors who have fifty (50) or more employees and receive a subcontract of \$50,000.00 or more and who are not otherwise exempt under C.F.R., Part 60-1 to establish written affirmative action compliance programs in accordance with 41 C.F.R., Section 60-1.40.

E. Bidders are responsible to EEO compliance as provided in Executive Order 11246 and implementing regulations Title 41, Chapter 60-4.2, 60-4.3 (Equal Employment Opportunity Clause & Notification of Standard Specifications), 60-250, and 60-741, when applicable.

F. Bidder certifies that it is not currently in receipt of any outstanding letters of deficiencies, show cause, probable cause or other such notifications or noncompliance with EEO regulations.

Signed this _____ day of _____, 20____.

Bidder:_____

(Signed)_____

Printed Name:_____

Title:_____

DECLARATION OF PERSONAL PROPERTY TAX DELINQUENCY

OHIO REVISED CODE 5719.04

I, the undersigned, hereby affirm that the bidder identified below IS/IS NOT
(please circle the one that applies) charged at the time of submitting this Bid with any
delinquent personal property taxes on the general tax list of personal property of the
County.

COMPLETE THIS PARAGRAPH ONLY IF APPLICABLE:

The amount of any such due and unpaid delinquent tax and any due and unpaid
penalties and interest is \$_____.

Signed this _____ day of _____, 20____.

Bidder:_____

(Signed)_____

Printed Name:_____

Title:_____

STATE OF OHIO)
COUNTY OF _____) ss:

Before me, a Notary Public, in and for said County, personally appeared the person
identified above, who did sign this document after first affirming that the execution of this
document was an authorized act on behalf of the above Bidder.

IN TESTIMONY WHEREOF, I have affixed my hand and the seal of my office at this
_____day of _____, 20____.

NOTARY PUBLIC

**CERTIFICATE OF BIDDER
UNRESOLVED FINDINGS OF RECOVERY
WITH AUDITOR OF STATE
ORC 9.24 & 9.241**

I, the undersigned, hereby affirm that the Bidder identified below:

CHECK & COMPLETE ONLY ONE

☐ has no unresolved findings of recovery with the State of Ohio Auditor, as defined by;
ORC 9.24 & 9.241

☐ has the following unresolved findings of recovery with the State of Ohio Auditor, as
Defined by ORC 9.24 & 9.241:

Signed this _____ day of _____, 20____.

Bidder: _____

(Signed) _____

Printed Name: _____

Title: _____

HOLD HARMLESS CLAUSE

Defiance County, Ohio

INDEMNITY: To the maximum extent allowed by Ohio law, the Contractor shall defend, indemnify, and hold harmless the County and the Owner (i.e.: county, township, and/or municipality), if applicable, (hereinafter: the indemnified parties), and all of their elected and appointed officials, together with all their employees and agents from any and all claims, demands, causes of action, judgments, liens, penalties, costs, and expenses (including attorney fees and expenses) of any kind, including claims for bodily injury, illness, death, property damage, or loss of use, which may at any time be imposed upon, incurred by, or asserted against the indemnified parties as a result of any action of the Contractor, its officers, employees, invitees, or agents arising out of or in consequence of this Agreement, including, but not limited to: 1.) The performance or non-performance of the work or any obligation under this Agreement; 2.) The common law or any legislation, regulation or order including environmental laws, rules, and orders; or 3.) Negligence including any passive negligence of the indemnified parties. This indemnification shall survive any termination of this Agreement and is not limited by the Contractor's insurance coverage. In order to effectuate and facilitate the indemnification of the indemnified parties, Contractor does hereby waive any and all employer immunity provided by the workmen's compensation law under Section 35, Article II, of the Ohio Constitution. At the option of the indemnified parties, Contractor shall provide the indemnified parties with legal counsel and shall further bear all costs and expenses including attorney fees in the defense of any suit arising hereunder. Additionally, Contractor shall repair or pay for the repair of any damage to the indemnified parties' property caused by the Contractor or its officers, employees, invitees, or agents.

INSURANCE: Contractor at its sole cost and expense shall furnish and keep in full force and effect during the time this Contract is in effect sufficient insurance to protect the indemnified parties from any claim arising from the Contractor's conduct as a result of this Agreement, including: workers' compensation coverage in compliance with State law; comprehensive general commercial liability insurance with limits of at least \$2,000,000.00 for products-completed operations aggregate and general aggregate; \$2,000,000.00 for personal and advertising limit and injury and aggregate, and motor vehicle liability insurance (including coverage for owned, non-owned or hired vehicles) with broad form property damage coverage with limits of at least \$1,000,000.00 for bodily injury or death per occurrence and \$1,000,000.00 aggregate, \$1,000,000.00 property damage per occurrence and \$1,000,000.00 aggregate (or a reasonable equivalent expressly accepted by the indemnified parties), plus loss insurance for the equipment used. If the above insurance sums are blank, Contractor shall provide insurance as specified. Such liability insurance policies shall insure the contractual liability assumed hereunder, shall name the indemnified parties as additional insured parties for all work under this Contract, and shall provide that such insurance is primary to any other of indemnified parties' liability insurance. Prior to commencing any work, Contractor shall furnish the indemnified parties with proof of such insurance with companies acceptable to the indemnified parties.

OHIO WORKERS' COMPENSATION COVERAGE

The Contractor must secure and maintain valid Ohio workers' compensation coverage until the County, as set forth in Section 109.12(E) of the Construction and Material Specifications Manual, has finally accepted the Project. A certificate of coverage evidencing valid workers' compensation coverage must be submitted to the County before the Contract will be executed.

The Contractor must immediately notify the County, in writing, if it or any subcontractor fails or refuses to renew their workers' compensation coverage. Furthermore, the Contractor must notify the County, in writing, if it's or any of its subcontractor's workers' compensation policies are cancelled, terminated, or lapse.

The failure to maintain valid workers' compensation coverage shall be considered a breach of contract, which may result in the Contractor being removed from the Project, withholding of pay estimates and/or termination of the Contract.

NON-COLLUSION AFFIDAVIT

TO BE EXECUTED BY EACH AWARDEE OF A PRINCIPAL CONTRACT

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)§
)

_____, being first duly sworn, deposes and says that he is
_____(sole owner, a partner, president, secretary, etc.)
of _____ (company name).

The party making the foregoing bid; that such bid is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation; that such bid is genuine and not collusive or sham; that said bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived or agreed with any bidder or anyone else to put in a sham bid, not that anyone shall refrain from bidding; that said bidder has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the bid price of said bidder or of any other bidder, nor to fix any overhead, profit or cost element of such bid price, nor that of any other bidder, nor to secure any advantage against the public body awarding the contract to anyone interested in the proposed contract; that all statements contained in such bid are true; and further, that said bidder has not, directly or indirectly, submitted his bid price or any breakdown thereof, nor the contents thereof, nor divulged any information or data relative thereto, nor paid and will not pay fees in connection therewith to any corporation, partnership, company, association, organization, bid expository, nor to any member or agent thereof, nor to any other individual except to such person or persons as have a partnership or other financial interest with said bidder in his general business.

(Signed)_____

Printed Name:_____

Title:_____

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public

NON-COLLUSION AFFIDAVIT

TO BE EXECUTED BY EACH "AWARDEE" OF A SUBCONTRACT

)
)§
)

_____, being first duly sworn, deposes and says that he is
_____(sole owner, a partner, president, secretary, etc.)
of _____ (company name)
the party submitting a bid for a subcontract covering _____
(nature of the subcontract) that such bid is not made in the interest of or on behalf of any
undisclosed person, partnership, company, association, organization or corporation; that
such bid is genuine and not collusive or sham; that said bidder has not directly or indirectly
induced or solicited any other bidder to put in a false or sham bid, and has not directly or
indirectly colluded, conspired, connived or agreed with any bidder or anyone else to put
in a sham bid, not that anyone shall refrain from bidding; that said bidder has not in any
manner, directly or indirectly, sought by agreement, communication or conference with
anyone to fix the bid price of a said bidder or of any other advantage against the
principal contractor or anyone interested in the proposed subcontract; that all statements
contained in such bid are true; and further, that said bidder has not, directly or indirectly,
submitted his bid price or any breakdown thereof, nor the contents thereof, nor divulged
any information or data relative thereto, nor paid and will not pay fees in connection
therewith to any corporation, partnership, company, association, organization, bid
expository, nor to any member or agent thereof, nor to any other individual except to
such person or persons as have a partnership or other financial interest with said bidder in
his general business.

The provisions of the affidavit shall not be held as disqualifying a person, firm or
corporation who has submitted a sub-proposal to one bidder from submitting separate
sub-proposals or quoting prices for materials or work to other bidders.

(Signed)_____

Printed Name:_____

Title:_____

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public

BID GUARANTY AND CONTRACT BOND
(Section 153.571 Ohio Revised Code)

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned _____
_____, (Name & Address)
as Principal, and _____ (Name)
as Sureties, are hereby held and firmly bound unto the BOARD OF DEFIANCE COUNTY
COMMISSIONERS and OHIO DEPARTMENT OF TRANSPORTATION, hereinafter called the
Obligee, in the penal sum of the dollar amount of the bid submitted by the Principal to the
owner on **MAY 5, 2025** to undertake the project known as **DEF-CR 424 ROADWAY
RESURFACING**.

The penal sum referred to herein shall be the dollar amount of the principal's bid to the
Obligee, incorporating any additive or deductive alternate proposals made by the
principal on the date referred to above to the Obligee, which are accepted by the
Obligee. In no case shall the penal sum exceed the amount to:
_____ dollars (\$_____). (If the
foregoing blank is not filled in, the penal sum will be the full amount of the principal's bid,
including alternates. Alternatively, if the blank is filled in, the amount stated must not be
less than the full amount of the bid including alternates, in dollars and cents. A
percentage is not acceptable.) For the payment of the penal sum will and truly be made,
we hereby jointly and severally bind heirs, our executors, administrators, successors,
assigns and ourselves.

THIS CONDITION OF THE ABOVE OBLIGATION IS SUCH that whereas the above-named
principal has submitted a bid to the above referred to project.

Now, therefore, if the Obligee accepts the bid of the principal and the principal fails to
enter into a proper contract in accordance with the bid, plans, detailed specifications and
bills of material; and in the event the principal pays to the Obligee the difference not to
exceed ten percent (10%) of the penalty hereof between the amount specified in the bid
and such larger amount for which the Obligee may in good faith contract with the next
lowest bidder to perform the work covered by the bid; or in the event the Obligee does
not award the contract to the next lowest bidder and resubmits the project for bidding,
the principal pays to the Obligee the difference not to exceed ten percent (10%) of the
penalty hereof between the amount specified in the bid, or the costs in connecting with the
resubmission, of printing new contract documents, required advertising, and printing and
mailing notices to prospective bidders, whichever is less, then this obligation shall be null
and void, otherwise to remain in full force and effect; if the Obligee accepts the bid of
the principal and the principal within ten days after the awarding of the contract enters
into a proper contract in accordance with the bid, plans, details, specifications and bills of
material, which said contract is made a part of this bond the same as though set forth
herein.

Now also, if the said principal shall well and faithfully do and perform the things agreed
to be done and performed according to the terms of said contract; and shall pay all
lawful claims of subcontractors, material men, and laborers, for labor performed and
material furnished in the carrying forward, performing or completing of said contract; we
agreeing and assenting that this undertaking shall be for the benefit of any material man

or laborer having a just claim, as well as for the Obligee herein; then this obligation shall be void; expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The above Surety hereby certifies that it is authorized by the superintendent of insurance, State of Ohio, to execute the above bond and that the liability incurred is within the limits prescribed by Section 3929.121 of the Ohio Revised Code.

The said surety hereby stipulates and agrees that no modifications, omissions or additions in or to the terms of the said contract or in or to the plans or specifications therefore shall in any way affect the obligation of said surety on its bond and does hereby waive notice of any such modifications, omissions or additions to the terms of the contract or in or to the plans and specifications.

SIGNED AND SEALED this _____ day of _____, 20____.

Principal:

Signature

Printed Name:_____

Title:_____

Surety:

Surety Company:

Name:_____

Address:_____

By:_____

Attorney-in-fact

Surety Agent:

Name:_____

Address:_____

VI. PROPOSAL

Defiance, Ohio, _____, 20_____

To the Board of County Commissioners:

The undersigned Bidder certifies the pre-bid examination, in its entirety, of all Bid Documents contained in or referenced by this Proposal, including the Notice to Bidders, Instructions to Bidders, General & Supplemental Provisions, Standard Specifications, Scope of Work, Plans & Specifications, and Planned Bid Items & Quantities, which shall govern this improvement and are made a part of this Proposal and the ensuing contract.

DESCRIPTION OF THE IMPROVEMENT

DEF-CR 424 ROADWAY RESURFACING

PID 122963

The undersigned Bidder proposes to furnish all materials, tools, labor, transportation, machinery, appliances, and appurtenances necessary, and to prosecute to full completion, the Work called for hereunder, and in consideration thereof, to accept from the County, as full payment for completion of each item as specified, the respective unit or lump sum price hereafter set forth.

The undersigned Bidder agrees that, if this Proposal is accepted, said Bidder will, within ten (10) days after notification of such acceptance, enter into the contract for the performance of the Work proposed and, as a guarantee of the faithful performance thereof, to furnish at the time of executing the contract, a bond in the amount equal to 100% of the total Bid price, with a Surety subject to the approval of the County.

Bidder hereby agrees to commence work under this contract on or before a date to be specified in the Notice to Proceed and to fully complete the Project by **September 30, 2025**. Bidder further agrees to pay as liquidated damages, per ODOT Item 108.07, ODOT specifications latest editions and as provided in Section II. (7) of these documents.

The Bidder hereby agrees that the Board of County Commissioners has the right to reject all bids, and the Bidder will not dispute the correctness of the quantities used to determine the lowest and best bid.

Accompanying this Bid is a bid guarantee or bond payable to the County. Upon any failure to execute the Contract or provide an adequate performance bond as aforesaid, it is agreed that the undersigned Bidder shall forfeit the bid guarantee or bond accompanying the proposal to the County, to the extent allowed by law.

Bidder acknowledges receipt of the following addendum:

Bidder (full name): _____

Bidder's Federal Tax ID Number (EIN): _____

State Contractor License Number (if applicable): _____

Signed: _____

Printed Name: _____

Title: _____

Bidder's mailing address: _____

Phone Number: _____

Fax Number: _____

E-mail Address: _____

Attch: Bid Guarantee or Bond
Bid Prices (completed unit & lump sum price list)
Supplemental Bidder Qualification Forms (if any)
Declaration: Personal Property Tax Delinquency
Certificate: Unresolved Findings of Recovery

BID PRICES
Engineer's Estimate: \$520,000.00

Planned Bid Items & Quantities

Item	Description	Quantity	Units	UNIT PRICE	TOTAL COST
407	Tack Coat	5222	Gal		
411	Stabilized Crushed Aggregate, As Per Plan	871	Tons		
441	Asphalt Concrete Surface Course, Type 1 (449), PG 58-28, As per plan	4358	Tons		
643	Edge Line	6.552	Mile		
643	Center Line	3.276	Mile		
Special	Formed Construction Joine	4	Each		
614	Maintaining Traffic	1	Lump		
624	Mobilization	1	Lump		
				TOTAL	

EXTENSION ERRORS: Where an error in extension occurs, the unit price bid will be accepted by the Defiance County Board of Commissioners.

VII. ARTICLES OF AGREEMENT

This Agreement is made and entered into by the County, acting by and through its Board of County Commissioners, and the Contractor identified below, hereinafter called the Contractor.

WITNESSETH:

The Contractor, for and in consideration of certain payments to be made as specified herein, hereby covenants and agrees to perform and execute all provisions of its Proposal for construction of the subject public improvement, including fulfillment of the requirements of the Notice to Bidders, Instructions to Bidders, General & Supplemental Provisions, Standard Specifications, Scope of Work, Plans & Specifications, and Planned Bid Items & Quantities, and to be governed by the provisions contained therein, setting forth duties, relations and obligations of the Engineer, Contractor and the Surety, which are hereto attached and made a part hereof, and agrees to fully and completely perform the Work described hereby in a manner to achieve completion thereof by or before a completion date of **September 30, 2025**.

In consideration of the performance by the Contractor of the covenants and agreements as herein set forth, the County hereby covenants and agrees to pay the Contractor according to the schedule of rates and prices set forth in the attached Proposal of said Contractor, and at the time and in the manner hereinafter set forth herein.

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands effective this _____ day of _____, 20_____.

COUNTY OF DEFIANCE

(Signature)
Board of Commissioners

(Printed Name & Title)

CONTRACTOR (full name)

(Signature)
Contractor

(Printed Name & Title)

(Mailing Address)

Approved on County's behalf as to form:

By: _____
For: Prosecuting Attorney

Date: _____

COUNTY AUDITOR'S CERTIFICATE

CONTRACT NO: _____

PROJECT: DEF-CR 424 Roadway
Resurfacing

FUND: _____

VENDOR NO: _____

DATE: _____

VENDOR: _____

It is hereby certified that the amount to meet the obligation of this contract in the fiscal year in which the contract has been made has been lawfully appropriated for the purposes of the contract and is in the Defiance County Treasury in the process of collecting to the credit of the _____ Fund free from any previous encumbrances, obligations or certificates now outstanding.

Defiance County Auditor

It is hereby certified that the amount (\$_____) required to meet the contract, agreement, obligation, payment or expenditure for the above, has been lawfully appropriated or authorized or directed for such purpose and is in the Defiance County Treasury or in the process of collection to the credit of the _____ Fund free from any obligation or certification is now outstanding.

Defiance County Auditor

It is hereby certified that the amount (\$_____), for the fiscal year _____ required to meet the contract, agreement, obligation, payment or expenditure, for the above, has been lawfully appropriated or authorized or directed for such purpose and is in the Defiance County Treasury or in the process of collection to the credit of the _____ Fund free from any obligation or certification now outstanding. Outstanding balance of contract is estimated (\$_____) to be appropriate for the fiscal year(s) _____.

Defiance County Auditor

THIS CONTRACT IS NOT VALID UNLESS COUNTY AUDITOR'S CERTIFICATE IS SIGNED

Jill R. Little
Defiance County Auditor
500 Second St., Suite 301
Defiance, OH 43512
419-782-5311 Fax: 419-784-2761

DEFIANCE COUNTY VENDOR PAYMENT AUTHORIZATION

Vendor Information

(Print or Type this form)

Name _____
Address _____

Phone # _____ Fax # _____
E-mail Address _____
Federal ID Number _____

I hereby authorize Defiance County to make ACH payments to the following account in lieu of checks to the named financial institution listed below:

Account Information

_____ Checking _____ Savings

Financial Institution Name _____
Branch Location/Address _____
Financial Institution Routing Number _____
Your Account Number _____

This authority is to remain in effect until Defiance County's Auditor's Office has received written notification from the undersigned of its termination and have a reasonable opportunity to act on it.

Printed Name _____ Date _____

Signature _____

Title _____

Office Use Only:

Vendor # _____

Pre-note Date _____

1st ACH Payment Date _____

United States of America
State of Ohio
Office of the Secretary of State

EXAMPLE
- out of state -

*I, Jennifer Brunner, do hereby certify that I am the duly elected, qualified and present acting Secretary of State for the State of Ohio, and as such have custody of the records of Ohio and Foreign business entities; that said records show **BROOKS CONSTRUCTION COMPANY**, an Indiana corporation, having qualified to do business within the State of Ohio on January 13, 1975 under License No. 462110 is currently in **GOOD STANDING** upon the records of this office.*



*Witness my hand and the seal of the
Secretary of State at Columbus, Ohio
this 5th day of May, A.D. 2008*

A handwritten signature in cursive script, appearing to read "Jennifer Brunner", followed by a horizontal line.

Ohio Secretary of State

Validation Number: V2008125M3A419



Department of Administrative Services
Equal Opportunity Division

EXAMPLE

7/12/2012

Brent Gerken
Gerken Paving Inc.
9-072 US 24
Napoleon, OH 43545

Dear Brent Gerken:

SUBJECT: Certificate of Compliance
Effective Dates: 7/12/2012 through 01/08/2013

As you are aware, a company desiring to participate on State of Ohio and state-assisted construction contracts must demonstrate to this Office that the company has complied with all applicable federal and state affirmative action programs for at least the last five years.

After careful review of the affirmative action documentation you provided to this office, and pursuant to the requirements set forth in Section 9.47 of the Ohio Revised Code, the Equal Opportunity Division of the Ohio Department of Administrative Services has determined that there are no apparent violations of any affirmative action program with which the Gerken Paving Inc. is required to comply. This letter shall serve as the State's official certification to this effect.

In order for the Gerken Paving Inc. to maintain its certification status in this regard, it must ensure equal employment opportunity in accordance with all applicable State and Federal EEO laws, rules, regulations and guidelines.

As the Certificate of Compliance Program indicates, the State of Ohio values diversity among its business partners and their employees, and hopes to see them grow and prosper. Consequently, we are delighted to be able to assist your company with this approval of your affirmative action program efforts. If you need any assistance or have questions about the Certificate of Compliance Program, its objectives or its operation, please contact the Equal Opportunity Division's Construction Compliance Unit at 614.466.8380.

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard M. Scott".

Richard M. Scott
State EEO Coordinator
Ohio Department of Administrative Services

Service · Support · Solutions for Ohio Government

Equal Opportunity Division | 4200 Surface Road | Columbus, Ohio 43228
Phone 614.466.8380 | FAX 614.728.5628
Web: www.das.ohio.gov/eod

The State of Ohio is an equal opportunity employer.

John Kasich, Governor
Robert Blair, DAS Director
Richard M. Scott, Deputy Director/State EEO Coordinator



INDEPENDENT CONTRACTOR/WORKER ACKNOWLEDGMENT

Ohio Public Employees Retirement System
277 East Town Street, Columbus, Ohio 43215-4642

Employer Outreach: 1-888-400-0965
www.opers.org

This form is to be completed if you are an individual who begins providing personal services to a public employer on or after Jan. 7, 2013 but are not considered by the public employer to be a public employee and will not have contributions made to OPERS. This form must be completed not later than 30 days after you begin providing personal services to the public employer.

STEP 1: Personal Information

Social Security Number or Employer Identification Number

999-99-9999

First Name

MI

Last Name

JILL

Name of Current Employer

DEFIANCE COUNTY

STEP 2: Public Employer Information

Name of Public Employer for Which You Are Providing Personal Services

DEFIANCE COUNTY

Employer Contact

First Name

MI

Last Name

JILL

LITTLE

Employer Code

2063-08

Employer Contact Phone Number

419-782-5311

Service Provided to Public Employer

Start Date of Service

Month

Day

Year

/ /

End Date of Service

Month

Day

Year

/ /

(THIS FORM IS FOR 5 OR LESS EMPLOYEES)

STEP 3: Acknowledgment

The public employer identified in Step 2 has identified you as an independent contractor or another classification other than a public employee. Ohio law requires that you acknowledge in writing that you have been informed that the public employer identified in Step 2 has classified you as an independent contractor or another classification other than a public employee for the services described in Step 2 and that you have been advised that contributions to OPERS will not be made on your behalf for these services.

If you disagree with the public employer's classification, you may contact OPERS to request a determination as to whether you are a public employee eligible for OPERS contributions for these services. Ohio law provides that a request for a determination must be made within five years after you begin providing personal services to the public employer, unless you are able to demonstrate through medical records to the Board's satisfaction that at the time the five-year period ended, you were physically or mentally incapacitated and unable to request a determination.

By signing this form, you are acknowledging that the public employer for whom you are providing personal services has informed you that you have been classified as an independent contractor or another classification other than a public employee and that no contributions will be remitted to OPERS for the personal services you provide to the public employer. If entering into a contract to provide services as an independent contractor to the same employer from which you retired, or to any employer if less than two months after the retirement allowance commences, the pension portion of your benefit will be forfeited during the period of the contract. The annuity portion of your benefit will be suspended and will be paid in a lump sum upon termination of the contract.

This acknowledgement will remain valid as long as you continue to provide the same services to the same employer with no break in service regardless of whether the initial contract period is extended by any additional agreement of the parties. You also acknowledge that you understand you have the right to request a determination of your eligibility for OPERS membership if you disagree with the public employer's classification.

This form must be retained by the public employer and a copy sent to OPERS. The public employer's failure to retain this acknowledgment may extend your right to request a determination beyond the five years referenced above.

Signature _____ Today's Date ____/____/____
Do not print or type name

- Example -

RELEASE OF LIENS

To Whom It May Concern:

Please take notice that we, the undersigned laborers, mechanics, contractors, subcontractors, and/or suppliers, who have been employed, or who furnished the material on the public contract for the project known as project name and owned by Def. Engineer's Office

DO CERTIFY, THAT in consideration of amounts paid to us, we, and each of us do hereby release all rights of liens against said project, property, and improvements on said property in favor of the owner, any private individual, bank, or loan association that may have been made, or that may make a loan on said property, and we further state that the Owner of said project on said property has paid us in full up to his date including all State and Federal Tax obligations as per his agreement with us for the construction of the same. We further certify that all our employees, suppliers, subcontractors, agents, etc. have been paid in full for all labor and/or material furnished on said project.

	Printed Name & Signature of Contractor/Subcontractor/Laborers	Type of Work	Dollar Amount	Date	Phone
1.	<u>Contractors Name</u>	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____
3.	_____	_____	_____	_____	_____
4.	_____	_____	_____	_____	_____

To: OWNER

I, THE CONTRACTOR, hereby represent and certify unto you that the signatures signed to the above Release of Liens, comprise a true, full and complete list of all businesses and persons who have contracted for or furnished any and all materials, labor, and fixtures of every description for, in or about the erection, construction, repair or improvement on the above project, or who are or have been subcontractors upon said project, or any part thereof, or for furnishing any and all fixtures or improvements to said project under any contract or agreement with the undersigned.

Contractor further states that the matters and things stated herein are, to the best of his knowledge and belief, true.

NOTARY FILLS THIS OUT

Dated and signed this _____ day of _____, 20__.

Contractor/Subcontractor/Laborer Signature

NOTARY:

Subscribed and sworn before me this _____ day of _____, 20__.

Notary:
My Commission Expires:

RELEASE OF LIENS

To Whom It May Concern:

Please take notice that we, the undersigned laborers, mechanics, contractors, subcontractors, and/or suppliers, who have been employed, or who furnished the material on the public contract for the project known as _____ and owned by _____

DO CERTIFY, THAT in consideration of amounts paid to us, we, and each of us do hereby release all rights of liens against said project, property, and improvements on said property in favor of the owner, any private individual, bank, or loan association that may have been made, or that may make a loan on said property, and we further state that the Owner of said project on said property has paid us in full up to his date including all State and Federal Tax obligations as per his agreement with us for the construction of the same. We further certify that all our employees, suppliers, subcontractors, agents, etc. have been paid in full for all labor and/or material furnished on said project.

	Printed Name & Signature of Concactor/Subcontractor/Laborers	Type of Work	Dollar Amount	Date	Phone
1.	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____
3.	_____	_____	_____	_____	_____
4.	_____	_____	_____	_____	_____

To: OWNER

I, THE CONTRACTOR, hereby represent and certify unto you that the signatures signed to the above Release of Liens, comprise a true, full and complete list of all businesses and persons who have contracted for or furnished any and all materials, labor, and fixtures of every description for, in or about the erection, construction, repair or improvement on the above project, or who are or have been subcontractors upon said project, or any part thereof, or for furnishing any and all fixtures or improvements to said project under any contract or agreement with the undersigned.

Contractor further states that the matters and things stated herein are, to the best of his knowledge and belief, true.

Dated and signed this ____ day of _____, 20__.

Contractor/Subcontractor/Laborer Signature

NOTARY:

Subscribed and sworn before me this ____ day of _____, 20__.

Notary:
My Commission Expires:

**Affidavit Of Compliance
PREVAILING WAGES**

I, _____
(Name of person signing affidavit)(Title)

do hereby certify that the wages paid to all employees of

(Company Name)

for all hours worked on the

(Project name and location)

project, during the period from _____ to _____ are in
(Project Dates)

compliance with prevailing wage requirements of Chapter 4115 of the Ohio Revised Code.

I further certify that no rebates or deductions have been or will be made, directly or indirectly,
from any wages paid in connection with this project, other than those provided by law.

(Signature of Officer or Agent)

Sworn to and subscribed in my presence this _____ day of _____,

20 _____.

(Notary Public)

The above affidavit must be executed and sworn to by the officer or agent of the contractor or subcontractor who supervises the payment of employees. This affidavit must be submitted to the owner (public authority) before the surety is released or final payment due under the terms of the contract is made.

LAW1003